

Volume 3

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Nathanael M. Cousins, Magistrate Judge

DARYELLE LAWANNA PRESTON,

Plaintiff,

VS.

NO. C 14-02022 NC

CITY OF OAKLAND; DEANNA  
SANTANA, in her individual  
capacity; and DOES 1 through  
10, inclusive,

Defendants.

San Francisco, California  
Wednesday, September 16, 2015

**TRANSCRIPT OF PROCEEDINGS**

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1 Wednesday - September 16, 2015

8:56 a.m.

2 P R O C E E D I N G S

3 ---000---

4 (Proceedings were heard outside the presence of the jury:)

5 **THE COURT:** Come on forward. The jurors are not  
6 present.

7 **MR. SIEGEL:** Good morning, Your Honor.

8 **THE COURT:** Good morning. I hear that there were one  
9 or more issues to present outside the presence of the jury.

10 **MR. SIEGEL:** Today we're having a perfect storm of  
11 witness problems. Ms. Anderson called Ms. Mehta about an hour  
12 ago, and said she was sick and couldn't come. Ms. Mehta  
13 advised her that she had to come.

14 Lamont Ewell advised us about an hour and a half ago that  
15 his flight from San Diego was canceled, due to weather; and so  
16 he's going to come tomorrow.

17 Witnesses we had expected the City to provide us today or  
18 yesterday -- or yesterday -- Barbara Parker and Katano  
19 Kasaine -- are not available today. So today's kind of a  
20 little unclear as to what will happen. Hopefully, Ms. Anderson  
21 will show up.

22 Then we have the former Police Chief. He'll be here. In  
23 fact, he's here.

24 The Fire Chief will be here.

25 Mayor -- former Mayor Quan will be here.

1           **THE COURT:** I'm sorry. Just catch up with my  
2 note-taking.

3           **MR. SIEGEL:** Okay. So what we know --

4           **THE COURT:** Jordan. Reed.

5           **MR. SIEGEL:** Swanson and Quan. Those, we know.  
6 Anderson hopefully, again, will show up as required.

7           **MR. LAFAYETTE:** Is -- and then I think we were going  
8 to read Joe Keffer.

9           **MR. SIEGEL:** Yeah. We can read Joe Keffer.

10          **MR. LAFAYETTE:** Completing Joe Keffer today.

11          I think that -- I haven't talked to Mr. Ewell. Are you  
12 sure there's no way he can get up here by the close of biz  
13 today?

14          **MR. SIEGEL:** That's what he tells us.

15          **MR. LAFAYETTE:** I know there were storms down there.  
16 I just don't -- this is the first I've heard of that.

17          I can tell Your Honor that it looks to Mr. Siegel and I  
18 that until I heard this, at least as of last night, we thought  
19 we were ahead of the game, and would be through with the  
20 evidence by Friday. That's kind of what I was looking at.

21          **THE COURT:** Let me go back over some of these names  
22 that were on plaintiff's exhibit last back on August 11th, to  
23 see if some of these folks are still coming this week, or if  
24 you've decided that we don't need them.

25          **MR. SIEGEL:** Okay.

1           **THE COURT:** So Barry Donelan.

2           **MR. SIEGEL:** We may not need him. Depends upon how  
3 the testimony of Chief Jordan goes.

4           **THE COURT:** Okay. T.C. Everett, I think, was covered  
5 by a Pretrial Order which -- is T.C. Everett still coming?

6           **MR. SIEGEL:** Yes, very briefly.

7           **THE COURT:** All right. Chuck Garcia.

8           **MR. SIEGEL:** Same as Donelan.

9           **THE COURT:** So depending?

10          **MR. SIEGEL:** Right.

11          **THE COURT:** Yvonne Hudson?

12          **MR. SIEGEL:** You struck.

13          **THE COURT:** I struck her. Right?

14          Sonia Lara?

15          **MR. SIEGEL:** We are not going to call her. I assume  
16 the Defense will.

17          **THE COURT:** Dwight McElroy?

18          **MR. SIEGEL:** He will be here tomorrow, as scheduled.

19          **THE COURT:** Dan Robertson?

20          **MR. SIEGEL:** Same as -- as Donelan.

21          **THE COURT:** So they are, depending on whose testimony  
22 are you needing -- feeling like you need to have before they  
23 testify to make the decision?

24          **MR. SIEGEL:** Jordan's.

25          **THE COURT:** So you may know that here in half an

1 hour: Whether you want to call him?

2 **MR. SIEGEL:** Correct.

3 **THE COURT:** And Cheryl Thompson?

4 **MR. SIEGEL:** She -- well, Mr. Lafayette and I have a  
5 disagreement about that. She turned out the couple of days  
6 before trial to be unavailable. And we proposed to use part of  
7 her deposition. And --

8 **MR. LAFAYETTE:** Obviously, it's my understanding  
9 she's been unavailable for over a month, because she had  
10 planned a vacation. And it was only a few days ago that  
11 plaintiffs advised us that they thought she was unavailable,  
12 and that they wanted to read her deposition transcript,  
13 instead.

14 **MR. SIEGEL:** That's all true. And she is one of the  
15 witnesses that the Court ruled at some point ago could testify  
16 on emotional distress. And we have very -- like, less than a  
17 page of deposition testimony, really.

18 **THE COURT:** All right. So as to today's schedule,  
19 we've got Jordan, Reed, Swanson, and Quan who are expected.

20 Why is Kasaine not available today?

21 **MR. LAFAYETTE:** Why is who?

22 **THE COURT:** Ms. Kasaine. Why is she not available  
23 today?

24 **MR. LAFAYETTE:** Ah, I'll have to go outside and find  
25 out. I knew that this was not a day that she was available,



1 which is why we moved everything until tomorrow. And so --

2 I mean, there is another witness here, and it's the  
3 plaintiff.

4 **THE COURT:** I'm going to get that to that. My  
5 question --

6 **MR. LAFAYETTE:** I'll find out, Your Honor, what the  
7 reason is for that.

8 **THE COURT:** My direction to both of you is that  
9 you're going to -- these other witnesses -- well, you tell me.  
10 Are they in the area? If they're in the East Bay now, that's a  
11 lot easier than telling someone from San Diego they've got to  
12 appear today, no matter what; versus someone who's in Oakland,  
13 and could get over here by this afternoon.

14 **MR. SIEGEL:** Right. Everyone is in Oakland.

15 **THE COURT:** All right. So and if it's dependent upon  
16 Mr. Jordan's testimony, then as soon as you finish with  
17 Mr. Jordan, you need to make a decision if you're intending to  
18 call those witnesses. Those are people who it makes sense to  
19 bring over today to fill the schedule.

20 **MR. SIEGEL:** I've just been advised Ms. Anderson has  
21 made it here, despite her illness.

22 **THE COURT:** Great. Well, we appreciate that. And so  
23 we'll have her at the beginning, and hope to be done with her  
24 quickly.

25 And then Mr. Jordan will come up next.

1 And then if there's -- I'm not encouraging anyone to try  
2 to filibuster and fill time, because I will notice if you are,  
3 and the jury will, too.

4 Ms. Preston ought to testify if no other witnesses are  
5 available for the plaintiff. She's here, and will testify  
6 after Mayor Quan if we get through Mayor Quan and there's no  
7 other witnesses here to call.

8 And, of course, we can use the Keffer deposition, you  
9 know. If there are other deposition transcripts you want to  
10 read in, that would be a good time to do it, too, if we're at a  
11 point in time that that makes sense.

12 I know there's a video that hasn't been shown to the jury  
13 yet. It's been referenced many times. So things like that.  
14 You know, if you're planning to put it in at some point --  
15 seems like you'll do that before.

16 Make sense?

17 **MR. SIEGEL:** Yes. We'll do our best.

18 **THE COURT:** Very good. That's all I can ask for.

19 A few other just programming notes. At 4:00 o'clock  
20 today, once the jury is done, if you can plan, that will give  
21 us an opportunity for us to talk about the closing  
22 instructions. We're not at the closing instructions yet, but  
23 there are a few fact stipulations that I contemplate that are  
24 implicit in the Verdict Form and the Jury Instructions I sent  
25 you. You haven't agreed to them. So the fact that I'm

1 thinking about them -- we need to have more of a meeting of the  
2 minds about some elements that I think are not really in  
3 dispute, but I need to get us all to agree that they're not in  
4 dispute. And if there are legal issues focusing into the case  
5 that you want to present to me, we can start talking about them  
6 at 4:00 o'clock today.

7       There was a document filed yesterday at 9:29, Docket 142,  
8 which is a further amended list of defense exhibits -- or it's  
9 a further amended exhibit list. I don't know what's different  
10 about it, and it doesn't have any explanation on it as to  
11 what's different about it than what was filed before. So can  
12 you tell me if I should read that; and if so, why?

13       **MR. LAFAYETTE:** I think it was filed, Your Honor, in  
14 response to your request on Monday that if there were some  
15 additional objections. And I think the only ones that there  
16 are additional objections on are to Exhibits --

17       **MS. DAVIDSON:** O, P, and Q.

18       **MR. LAFAYETTE:** -- o, P, and Q, which you've already  
19 admitted. Okay?

20       **THE COURT:** P and Q. Q is also Plaintiff's  
21 Exhibit 6.

22       **MR. LAFAYETTE:** Yes.

23       **THE COURT:** So I see that was admitted.

24       And P -- when was Exhibit P admitted?

25       **MR. LAFAYETTE:** Oh, it's not been admitted. I

1 apologize to the Court. P has not been admitted.

2 MR. SIEGEL: (Indicating.)

3 MR. LAFAYETTE: Oh, thank you.

4 THE COURT: And are you intending to --

5 MR. LAFAYETTE: Offer?

6 THE COURT: -- move Exhibit P into evidence?

7 MR. LAFAYETTE: Not yet, Your Honor.

8 THE COURT: Are you intending to do so?

9 MR. LAFAYETTE: If I could take a look at P again --

10 THE COURT: We need to resolve these disputes outside  
11 the presence of the jury, rather than in front of them.

12 MR. LAFAYETTE: No, Your Honor.

13 THE COURT: All right. Mr. Noble, if you could,  
14 check to see if our jurors are ready.

15 THE CLERK: Yes, sir.

16 MR. SIEGEL: Should we ask Ms. Anderson to come in?

17 THE COURT: Yes, please. And I failed to bring in my  
18 jury notes, so you can get them. I'll get that.

19 (Proceedings were heard in the presence of the jury:)

20 WINNIE ANDERSON,

21 called as a witness for the Plaintiff, having been previously  
22 duly sworn, testified further as follows:

23 THE COURT: All right. Please be seated, everyone.

24 Thank you to our jurors for making it through traffic one more  
25 day.

1 We return with Ms. Anderson on the stand. Ms. Anderson,  
2 thank you for returning for a second day.

3 I do have one note from the jury. It's Note Number 7.  
4 Ms. Anderson, this is a question from the jurors. You should  
5 treat it just like any other question. It's a question calling  
6 for a response from you to the best of your ability. You  
7 remain under oath, and your testimony is under penalty of  
8 perjury. The question has two different parts to it, so I'll  
9 read the whole thing once, and then go back and read it again,  
10 just so you have the entire context of the question.

11 The question is: The Local 55 MOU Side Letter extended  
12 the Paramedic Support Program by 30 days. The program --

13 And this is according to what the juror heard.

14 The program has a 3 percent premium pay. Did the  
15 paramedics in the program receive a 3 percent premium pay for  
16 the additional 30 days? And was there a budget adjustment made  
17 since the Side Letter increased the cost?

18 So I'll read that all again, just to make sure you heard  
19 it all.

20 The Local 55 MOU Side Letter extended the Paramedic  
21 Support Program by 30 days. The program has a 3 percent  
22 premium pay. Did the paramedics in the program receive a  
23 3 percent premium pay for the additional 30 days? And was  
24 there a budget adjustment made since the Side Letter increased  
25 the cost?

1           **THE WITNESS:** So none -- not to my knowledge --  
2 anybody was paid or would -- there was an adjustment.

3           **THE COURT:** So not to your knowledge as to both parts  
4 of the question?

5           **THE WITNESS:** Correct.

6           **THE COURT:** All right. Then we return with  
7 Mr. Lafayette examining Ms. Anderson. Of course, you may  
8 follow up on that question, and continue with your examination.

9           **MR. LAFAYETTE:** Thank you, Your Honor.

10                   **CROSS-EXAMINATION**     **(resumed)**

11 **BY MR. LAFAYETTE**

12 **Q.** I think we're looking at Exhibit 2zZ. And if I could --  
13 thank you. Good.

14 (Reporter requests clarification.)

15           **MR. LAFAYETTE:** Z, as in "zebra."

16 And I think it's in evidence, Your Honor.

17           **THE COURT:** I don't think it's in evidence.

18           **MR. LAFAYETTE:** I'd like to move Exhibit 2z into  
19 evidence.

20           **THE COURT:** Any objection?

21           **MS. MEHTA:** No objection.

22           **THE COURT:** Okay. Exhibit 2Z -- "zebra" or "Zulu" --  
23 is admitted into evidence.

24 (Trial Exhibit 2Z received in evidence)

25           **THE COURT:** You may proceed.

1           **MR. LAFAYETTE:** Thank you.

2   **Q.** Now, the first paragraph of Exhibit 2Z -- it states to --  
3 and this is an e-mail that you wrote to Ms. Kasaine. Correct?

4   **A.** Correct.

5   **Q.** And you wrote it after the meeting with the union. Right?

6   **A.** Correct.

7   **Q.** And with regard to this meeting, did you write this  
8 memo -- this e-mail at the suggestion of Ms. Preston?

9   **A.** Yes. She said it would be a good idea to summarize what  
10 happened.

11   **Q.** And did she indicate to you what items that you -- that  
12 she thought should be summarized?

13   **A.** Well, one definitely was to inform Ms. Kasaine that she  
14 needed to collect and deduct the agency fees and dues.

15   **Q.** Okay. So let's go through it. In the first paragraph  
16 there -- here --

17 (Document displayed.)

18 **BY MR. LAFAYETTE**

19   **Q.** After the salutation, "Thank you for being part of the  
20 information session with SEIU TPT bargaining team," then it  
21 says, "Throughout the course of bargaining, the union has  
22 raised the issue that dues have not been taken out of TPT  
23 employee paychecks." Now, had there been bargaining taking  
24 place for some time, where this had been an issue in  
25 bargaining?

1 A. I think it was raised, through -- in bargaining that we  
2 started in July, as a topic.

3 Q. So as of August 6th, it had been raised in bargaining.  
4 And it had been raised in the grievance filed on June 26?

5 A. Yes.

6 Q. And then it says, "You did confirm that dues had not been  
7 taken, and that you will be taking action in deducting dues  
8 from paychecks of TPT -- S" -- I can't read that very well. S?

9 A. SI1 or S --

10 Q. Employees?

11 A. I can't remember.

12 Q. So what you're acknowledging is that, at least with regard  
13 to this dues issue, Ms. Kasaine had said that in addition to  
14 anything else, that this issue would be resolved, and she would  
15 be taking these dues out of these paychecks. Right?

16 A. Yes.

17 Q. Now, there are two things that are referenced here. One  
18 is dues, and one is administrative fees. Right? An agency  
19 fee?

20 A. Right.

21 Q. An agency fee is that thing where an employee --

22 MS. MEHTA: Objection. Agency fees are not  
23 referenced, number one.

24 MR. LAFAYETTE: Could you take a look at the second  
25 paragraph, the second bullet down, where there's a statement



1 about agency fee?

2 Q. Now, can you define? Tell us what an agency fee is.

3 A. Essentially, it's a fee for the employees. Because  
4 they're represented by the union, they contribute to what has  
5 been negotiated for them. So it's also -- we're an agency shop  
6 in Oakland.

7 Q. Isn't that something that's paid, where the person -- the  
8 employee indicates they don't want to become part of the union,  
9 so there's an agency fee taken, nonetheless, as opposed to  
10 dues?

11 A. Right. They take a -- if they elect to be a full member  
12 of the union to be able to vote, they're -- they'll sign a  
13 card, and that will be considered membership dues, and  
14 categorized as that.

15 And if they don't, we automatically, as a condition of  
16 employment, have them pay a -- you know, a service fee/agency  
17 fee for the union's representation of them in their -- in  
18 their -- essentially, their conditions in their wages and  
19 salary.

20 Q. Now, was this meeting that you were -- that you were  
21 attending on the 6th with the union -- was this an extension of  
22 the bargaining?

23 A. It was an informational session. So the union had, you  
24 know, in bargaining, at times, there are opportunities for them  
25 to get more information; but there's no formal proposal being

1 passed. It's just getting to learn; gaining knowledge of how  
2 certain things work.

3 Q. All right. Now, the next bullet down that says, "City's  
4 obligations" -- do you see that?

5 A. Yes.

6 Q. Did you understand at that time that there was always the  
7 possibility that a person, by mistake or otherwise, could wind  
8 up not having dues or agency fees deducted from their checks?

9 A. Yes.

10 Q. And did -- was this something that indicated that the  
11 union would so notify you if it believed a person fell in that  
12 category?

13 A. Yes.

14 Q. That was something that was agreed to in that meeting?

15 A. Well, I think this was something agreed to for many years.  
16 It's part of the MOU. It's not new language.

17 Q. Okay. Now, turning to the second page, the Item 5 states,  
18 "The union will be sending a new information request for a list  
19 of active TPT employees during certain pay periods, in order to  
20 decipher between active and inactive TPTs."

21 Do you know why that one's in there?

22 A. Yes.

23 Q. Why?

24 A. Because a lot of the TPTs are seasonal workers, and so  
25 they come to work occasionally. So they'll still be on our

1 payroll list. And we can't deduct any agency fees or dues,  
2 because they aren't being paid. So you can't deduct anything  
3 from somebody who's not being paid.

4 So the active ones are the ones who are currently in  
5 payroll, having an active assignment. And the inactive ones  
6 are just still in the list. They may be called again in the  
7 future to take on an assignment, if they so choose.

8 Q. So there were still some feasibility issues with regard to  
9 collecting data, and making sure the data was consistent for  
10 purposes of going forward?

11 A. Yes.

12 Q. And that's what this is all about?

13 A. Yes.

14 Q. Okay. Now -- and I thought I heard yesterday -- I want to  
15 make sure -- that after this meeting, you no longer had  
16 responsibilities for -- for the TPTs?

17 A. Probably. I think I was done with the TPT bargaining.

18 Q. And was that bargaining over, or was that transferred to  
19 someone else?

20 A. It was transferred.

21 Q. And who was it transferred to?

22 A. Sonia Lara.

23 Q. Thank you. The -- could you take a look at Exhibit 2X.  
24 Are these your notes?

25 A. Yes.

1 Q. Are these notes supposed to be contemporaneously taken at  
2 the time the meeting took place?

3 A. Yes.

4 Q. So was the first --

5 MS. MEHTA: Objection.

6 THE COURT: What is the objection?

7 MS. MEHTA: Lack of foundation.

8 THE COURT: This exhibit's already in evidence.  
9 Overruled.

10 MS. MEHTA: No.

11 THE COURT: It is. Overruled.

12 Proceed.

13 BY MR. LAFAYETTE

14 Q. So was the first thing that happened in the meeting  
15 Ms. Katano [sic] saying -- well, why don't you read what it  
16 says on your notes where it says "Katano:"?

17 A. "I can," and "What you want?"

18 Q. Okay. Now, what was that a reference to?

19 A. It was reference to what Joe was asking in regards to  
20 reviewing of the data, and asking for more information or a  
21 data that SEIU wanted.

22 And she responded that sheik do that. And just asked him:  
23 What do you want?

24 Q. So what was the next thing that happened in the meeting?

25 A. I think we went over the data. And then Joe had said,

1 "What about dues?"

2 Q. So was that the very next thing that happened in the  
3 meeting: "What about dues?"

4 A. I think after reviewing the data, Joe had asked a  
5 question: Well, what about dues?

6 And she said, "Employees did not request dues, so I don't  
7 take it."

8 Q. Okay. Now, a few procedural questions. Was there a  
9 calendar that Ms. Preston kept with regard to activities in her  
10 department?

11 A. I think she --

12 MS. MEHTA: Objection. Speculation.

13 THE COURT: Overruled.

14 You may answer.

15 THE WITNESS: I think she can view our calendars. I  
16 don't know if she had her own; what she kept as her own  
17 calendar.

18 BY MR. LAFAYETTE

19 Q. So you're not aware if Ms. Preston kept a calendar of all  
20 activities in the department?

21 A. Again, she can view our calendars. Her calendar was her  
22 own.

23 Q. Do you have your deposition transcript up there?

24 A. I have a copy.

25 MR. SU: (Indicating.)

1 **BY MR. LAFAYETTE**

2 **Q.** Could you take a look at page 51? And I'd like for you to  
3 take a look at lines 15 through 19. Do you see that?

4 **A.** Yes.

5 **Q.** Does that refresh your recollection that she had a  
6 calendar, and everything goes into it?

7 **A.** It does.

8 **Q.** Does it refresh your recollection that everything goes  
9 through her?

10 **A.** So everything does go through her. And she looks at her  
11 calendar with what we populate on our calendars. So she looks  
12 at our calendars.

13 **Q.** Okay. Now, do you know who Deborah Edgerly is?

14 **A.** Yes.

15 **Q.** Was Deborah Edgerly a consultant for one of the unions?

16 **A.** Yes.

17 **Q.** Did you witness Ms. Preston passing suggestions on how the  
18 union should negotiate against the City with Ms. Edgerly?

19 **A.** I was witness to a conversation between Ms. Edgerly and  
20 Ms. Preston.

21 **Q.** And was she suggesting to Ms. Edgerly how this union  
22 should approach the City?

23 **A.** She was offering suggestions, because they weren't  
24 understanding what was going on.

25 **Q.** Okay. And before coming to Oakland, did you go to

1 college?

2 **A.** Did I go to college?

3 **Q.** Yes.

4 **A.** Yes.

5 **Q.** Where did you go to?

6 **A.** I went to USC, and UC Irvine.

7 **Q.** And UCLA?

8 **A.** No. USC: University of Southern California.

9 **Q.** Yes.

10 **A.** And UC Irvine.

11 **Q.** What was your degree at UC Irvine?

12 **A.** I was a biohumanities major.

13 **Q.** Did you get a B.A.? A B.S.?

14 **A.** Yes.

15 **Q.** And what was your degree at USC?

16 **A.** A master's in public administration.

17 **MR. LAFAYETTE:** I have no further questions at this  
18 time, Your Honor.

19 **THE COURT:** Thank you.

20 Mr. Siegel or Ms. Mehta, any further questions for  
21 Ms. Anderson?

22 And, Ms. Mehta, the exhibit you objected to, 2X, is the  
23 same as Exhibit 27 you moved into evidence yesterday.

24 **MS. MEHTA:** I made an error. I was on the wrong tab.  
25

1 REDIRECT EXAMINATION

2 BY MS. MEHTA

3 Q. Ms. Anderson, do you know what a sidebar is?

4 A. Yes.

5 Q. Isn't that where two representatives from the opposing  
6 sides discuss with each other what's happening in the  
7 negotiations?

8 A. Yes.

9 Q. Isn't it normal to have sidebars in negotiations?

10 A. Yes.

11 Q. Now, isn't it true that Trinette Gist-Skinner led you to  
12 believe that the signed agreement -- the agreement you  
13 signed -- between Local 55 and the City was authorized by  
14 City Council before you signed it?

15 MR. LAFAYETTE: Objection. Leading.

16 THE COURT: Sustained. Please rephrase the question.

17 BY MS. MEHTA

18 Q. Did anyone lead you to believe that the agreement between  
19 Local 55 and the City was authorized by City Council before you  
20 signed it?

21 A. I was led to believe that we did not need City Council  
22 authorization before I signed it.

23 MS. MEHTA: So Exhibit 2F was identified by  
24 defendants yesterday, but not admitted. Your Honor, I had  
25 marked as Exhibit 2ZF an e-mail between Anderson,



1 Fire Chief Reed, and Ms. Preston -- sorry -- dated July 3rd,  
2 2013.

3 Q. Can you turn to that, please, Ms. Anderson? Do you see  
4 it?

5 A. Yes.

6 Q. Do you recognize it?

7 A. Yes.

8 Q. How?

9 A. I wrote it.

10 Q. And is it a fair and accurate copy?

11 A. Yes.

12 MS. MEHTA: I move to admit 2F.

13 MR. LAFAYETTE: No objection, Your Honor.

14 THE COURT: 2F --

15 MS. MEHTA: Yes.

16 THE COURT: -- is admitted. Thank you.

17 (Trial Exhibit 2F received in evidence.)

18 (Document displayed.)

19 BY MS. MEHTA

20 Q. Do you see the second sentence in this e-mail? "Dear  
21 Teresa"? And here's the second sentence. "Based on my  
22 conversation with Trinette" --

23 And that's Trinette Skinner. Correct?

24 A. Correct.

25 Q. -- "the dialogue between 55 and Oakland Fire Department,

1 OFD, about operational changes for the PSP program was approved  
2 prior to me engaging in this."

3 You wrote that. Right, Ms. Anderson?

4 **A.** Yes.

5 **MS. MEHTA:** I'm going to publish again Exhibit 27.

6 (Document displayed.)

7 **THE COURT:** Are you sure that's 27?

8 **MS. MEHTA:** Yes.

9 **THE COURT:** Ms. Mehta.

10 **BY MS. MEHTA**

11 **THE COURT:** That's not 27 in my book.

12 **MS. MEHTA:** It's also marked as Defendant's

13 Exhibit 2X.

14 **MR. SIEGEL:** Your Honor, that's what you said was  
15 admitted earlier.

16 **MR. LAFAYETTE:** No. This is --

17 **THE COURT:** No the --

18 **MR. SIEGEL:** 27.

19 **THE CLERK:** Your Honor, it's admitted.

20 **THE COURT:** It's admitted, but 27 is the notes.

21 **MS. MEHTA:** 17, which is admitted.

22 **THE COURT:** Yes.

23 **BY MS. MEHTA**

24 **Q.** I know it's hard --

25 **THE COURT:** Proceed. Go ahead.

1 BY MS. MEHTA

2 Q. Ms. Anderson, this is the agreement you signed on  
3 June 28th, 2013. Correct?

4 A. Correct.

5 Q. Now, doesn't it say here, "Agreement. Number 1. The City  
6 and the union hereby agree to extend the Paramedic Support  
7 Program, PSP, for an additional 30 days from its expiration"?  
8 Isn't that what it says?

9 A. Yes.

10 Q. So isn't it true that this agreement that you signed on  
11 6/2/13 was to extend the actual Paramedic Support Program; not  
12 just talk about extending it?

13 A. The intent was to just talk about extending it.

14 Q. But this agreement that you signed -- you would agree it  
15 says to extend the actual program?

16 A. That is how it reads, yes.

17 Q. Thank you.

18 Isn't it true that extending a City program -- I'm  
19 sorry -- extending this program for an additional 30 days past  
20 its expiration costs the City money?

21 MR. LAFAYETTE: Objection. Leading.

22 THE COURT: Sustained.

23 BY MS. MEHTA

24 Q. Does this agreement cost the City money?

25 A. It may, if they were still implementing the program at the

1 time.

2 **Q.** Does this agreement, as written, cost the City money?

3 **A.** It could. Yes.

4 **Q.** Now, you didn't tell Ms. Preston that you were going to  
5 sign this agreement here before you signed it on June 28th,  
6 2013?

7 **MR. LAFAYETTE:** Inconsistent with the testimony.  
8 Argumentative.

9 **THE COURT:** You may proceed. I didn't hear the word  
10 "objection." Go ahead answer the question.

11 **THE WITNESS:** Could you repeat the question?

12 **BY MS. MEHTA**

13 **Q.** You didn't tell Ms. Preston that you were going to sign  
14 this agreement here before you signed it on June 28th, 2013?

15 **A.** I did tell Ms. Preston that we were going -- they were  
16 asking for an extension of 30 days. I did not show her that  
17 exact agreement. Yes.

18 **Q.** So you didn't tell her you were going to sign this  
19 agreement?

20 **MR. LAFAYETTE:** Objection. It's argumentative. And  
21 prior being asked and answered.

22 **THE COURT:** Overruled.

23 **BY MS. MEHTA**

24 **Q.** You didn't tell her you were going to sign this agreement  
25 on June 2nd, 2013?

1 A. I did not tell her.

2 Q. Thanks. Isn't it true that it was only after June 28th,  
3 2013, after you'd signed this agreement, that you told  
4 Ms. Preston about this agreement here on the screen?

5 A. That was when she was made aware and got a copy of it.  
6 She was aware that we were going to agree to extend it by 30  
7 days, but she did not get the actual copy of this until then --  
8 the actual signed copies.

9 Q. So you told her about this agreement after you had signed  
10 it on June 28th?

11 A. I told her we were going to -- yeah, I told her after -- I  
12 showed up her a copy of it after we signed it, not before; but  
13 she knew we were extending it for 30 days.

14 Q. She knew you were -- you had signed this agreement after  
15 you signed it?

16 A. She knew I signed it after, but she knew I was going to  
17 have this meeting about extending it for 30 days. So there's a  
18 difference here. Knowing about it, and then seeing the actual  
19 signature are two different circumstances.

20 Q. So are you testifying today that you told her you were  
21 going to sign this agreement before you signed it?

22 A. No. I am saying --

23 MR. LAFAYETTE: Objection, Your Honor.

24 THE COURT: Sustained.

25 Any question that starts with "So" is leading, and also

1 argumentative. Any question that starts with, "Isn't it true"  
2 is leading and argumentative.

3 So you've already had a chance for direct exam. We're not  
4 just repeating this for the jury. They paid attention  
5 yesterday. If you have a new question, ask a question; but  
6 it's not closing argument. So proceed with the question.

7 **BY MS. MEHTA**

8 **Q.** When Ms. Preston found out about this agreement, she told  
9 you that you did not have authority to sign this agreement.

10 **A.** Correct.

11 **Q.** Ms. Anderson, yesterday defendants identified a number of  
12 exhibits: 1V, 1X, and 1Z. And these were communications  
13 between you and various other people, all before June 2nd,  
14 2013, regarding this agreement?

15 **A.** Correct.

16 **Q.** So as quickly as we can, I'm going to ask you to look at  
17 1V -- "one victory" -- and tell me if any of these  
18 communications included Ms. Preston.

19 **A.** 1V did not.

20 **Q.** Please look at 1X.

21 **A.** 1X did not.

22 **Q.** Please look at 1Z.

23 **A.** 1Z did not.

24 **MS. MEHTA:** Now, turning to the SEIU matter of the  
25 City not collecting dues, here is Exhibit 2A, which was

1 admitted yesterday.

2 (Document displayed.)

3 **BY MS. MEHTA**

4 **Q.** Looking at 2A, the bottom e-mail is from Joe Keffer, to  
5 you and Ms. Preston, regarding his attempted grievance on  
6 June 26, 2013.

7 **A.** Yes.

8 **Q.** And this was the grievance about not collecting dues from  
9 SEIU. Correct?

10 **A.** Yes.

11 **Q.** Now, if you look up one e-mail, you will see that  
12 Ms. Preston then wrote to you on June 26th, 2013, at 9:07 a.m.  
13 "Winnie, please respond to the e-mail below. Your response  
14 should state that the union is required to state what section  
15 of the MOU is violated."

16 Ms. Preston's e-mail to you is instructing you to respond  
17 to Mr. Keffer. Correct?

18 **A.** Correct.

19 **Q.** And if you look above that, you respond to Ms. Anderson,  
20 and you say, "I will do that." Correct?

21 **A.** I said I would respond. Yeah.

22 **MS. MEHTA:** This is the document I showed you  
23 yesterday.

24 (Discussion off the record.)

25 **MR. LAFAYETTE:** All right. It appears that this is

1 going to be cumulative of yesterday's testimony.

2           **THE COURT:** Well, you need to include me in the  
3 conversation. What are you talking about?

4           **MS. MEHTA:** It's solely to refresh recollection.

5           **THE COURT:** What document are you talking about?

6           **MS. MEHTA:** It was Ms. Anderson's Exhibit 7 to her  
7 deposition.

8           **MR. LAFAYETTE:** It's not a trial exhibit.

9           **MS. MEHTA:** It's solely to refresh recollection.

10           **THE COURT:** About what?

11           **MS. MEHTA:** About whether or not she responded to  
12 Mr. Keffer as Ms. Preston instructed her to, and when.

13           **THE COURT:** Establish a foundation for something she  
14 can't recall first.

15 **BY MS. MEHTA**

16 **Q.** Ms. Anderson, you did respond to Mr. Keffer on June 26,  
17 2013, that same day that Ms. Preston asked you to?

18 **A.** I believe so.

19 **Q.** And you responded to Mr. Keffer, "First, we ask that you  
20 complete the grievance form by identifying grievance by name."

21           **MR. LAFAYETTE:** Objection. It's leading.

22           **THE COURT:** Sustained.

23 **BY MS. MEHTA**

24 **Q.** Did you tell Mr. Keffer to identify the grievance by name?

25 **A.** Yes.



1 Q. And did you also tell Mr. Keffer that the first step of  
2 the grievance procedure is to resolve it informally, and meet  
3 with the appropriate department?

4 A. Yes.

5 Q. Which, in this case, would be payroll?

6 A. We suggested payroll. Yes.

7 Q. And Katano Kasaine was head of payroll at this time?

8 A. Yes.

9 Q. And isn't it true after this e-mail, this June 26th, 2013,  
10 grievance died?

11 MR. LAFAYETTE: Objection. It's cumulative.

12 THE COURT: Overruled.

13 THE WITNESS: Nothing came of it, because we were  
14 about to enter bargaining with the TPTs.

15 BY MS. MEHTA

16 Q. Now, if a union files a grievance without following  
17 procedure, you most likely would not take any further action on  
18 that improperly filed grievance?

19 MR. LAFAYETTE: Objection. Calls for speculation.

20 THE COURT: Also leading. Sustained.

21 BY MS. MEHTA

22 Q. Would you take any further action on an improperly filed  
23 grievance?

24 A. Likely not.

25 Q. And finally -- this is my last question. Finally,

1 Ms. Preston removed you from the Local 55 negotiations after --  
2 after the June 28th, 2013, signed agreement?

3 A. She removed me after July 2nd's meeting.

4 MS. MEHTA: Thank you. No more questions.

5 THE COURT: Mr. Lafayette, do you have any further  
6 questions.

7 MR. LAFAYETTE: Very quick, Your Honor. Very, very  
8 quick.

9 THE COURT: I'll hold you to that.

10 MR. LAFAYETTE: You shall. You shall.

11 RECROSS-EXAMINATION

12 BY MR. LAFAYETTE

13 Q. On this issue of you saying that you were misled by  
14 Ms. Gist-Skinner, isn't it true, ma'am, that neither  
15 Ms. Skinner or Chief Reed ever told you that the side agreement  
16 had already been approved by the City Council?

17 A. No, they never said that the side agreement was approved  
18 by City Council.

19 Q. Isn't it true that no one ever told you that the side  
20 agreement had been previously approved by the City Council?

21 A. There was no side agreement prior --

22 Q. Well, they -- isn't it true that no one told you that the  
23 TA had been previously approved by the City Council?

24 A. No one told me that -- let me correct this. No one said  
25 that there was City Council authorization needed. So that's

1 different.

2 Q. And no one told you that City Council authorization had  
3 been obtained. Correct?

4 A. Correct.

5 Q. So the other thing with regard to this grievance that  
6 we've been talking about -- the grievance of June 26 -- when  
7 you're writing as an objection to the grievance -- correct?

8 When you responded to Mr. Keffer, your response was in the  
9 nature of an objection to the grievance. Correct?

10 A. I wouldn't say that.

11 Q. Well, with regard to filing a grievance --

12 A. Oh, to Mr. Keffer. I'm sorry.

13 Q. Yes.

14 A. I'm looking at the wrong e-mail. So my response to  
15 Mr. Keffer -- was that an objection to his grievance?

16 Q. Yes.

17 A. Yes. It's letting him know we're not accepting it.

18 Q. But in terms of the way in which he proceeded, a grievance  
19 is supposed to be filed by giving it to your department.

20 Right?

21 A. Not --

22 Q. So when you file --

23 THE COURT: Let her answer the question. Let her  
24 answer the question.

25 THE WITNESS: Not necessarily. Again, there's a few

1 steps in the grievance process. We pretty much -- Employee  
2 Relations would be, like, Step 3 or 4.

3 **BY MR. LAFAYETTE**

4 **Q.** But at Step 3 or 4, a grievance is filed by sending it to  
5 the department -- right? -- in the first instance?

6 **A.** Initial step is to deal with a direct supervisor.

7 **Q.** I'm saying it's Step 3.

8 **A.** In Step 3, I can't recall fully, because it's been a while  
9 since I looked at the MOU for Oakland.

10 **Q.** Okay. So you don't recall if he actually followed the  
11 procedure to file the grievance at Step 3?

12 **A.** I can't recall that right now.

13 **Q.** Okay. And you don't know if he had followed the procedure  
14 at any other point in time; do you?

15 **A.** No.

16 **Q.** And so when you object to a grievance, do you know --

17 **MS. MEHTA:** Objection. Misstates testimony.

18 **THE COURT:** Overruled.

19 Ask the question.

20 **BY MR. LAFAYETTE**

21 **Q.** When you object to a grievance, do you know if the union  
22 has the right to proceed forward, notwithstanding your  
23 objection?

24 **A.** Again, it depends on the language. So I can't recall  
25 that.

1 Q. So your objection, just because you made it, doesn't mean  
2 that the grievance may not go forward; does it?

3 A. Depends on the language.

4 THE COURT: You have one minute left, Mr. Lafayette.

5 MR. LAFAYETTE: Nothing further, Your Honor.

6 THE COURT: Thank you.

7 Ms. Anderson, you may step down, and you're excused from  
8 the trial. Thank you for coming in today.

9 (Witness excused.)

10 THE COURT: Just a programming note, ladies and  
11 gentlemen of the jury. We're going to have a next witness in a  
12 moment. You undoubtedly noticed that my courtroom deputy,  
13 Lili, left yesterday during the trial. She had a family  
14 emergency, and I don't expect that she'll be back this week.  
15 You may have seen that she was crying in the courtroom. That  
16 was not related to the evidence or the attorneys or anything  
17 having do with the trial. It was a personal matter, and that's  
18 why she's not here.

19 Mr. Noble has stepped in to assist us today. Yesterday  
20 Mr. Lucero was here. We may have other deputies assisting us  
21 throughout the rest the trial, and I appreciate their help.  
22 They're coming from other courtrooms to assist us now during  
23 the trial.

24 An instruction which I'd given you at the beginning -- and  
25 I gave you many instructions at the beginning, so this is not

1 to single out this instruction over others, but given how many  
2 objections there have been during the trial, I wanted to remind  
3 you of this instruction. It is that the things the lawyers say  
4 are not evidence. The reactions of the lawyers to the  
5 evidence -- how they feel about the evidence -- is not  
6 evidence. You are to disregard anything the lawyers say,  
7 whether it's objections, responses to objections, opening  
8 statements, closing arguments. That is not evidence.

9 What the witnesses say or what the documents show -- that  
10 is evidence, and you are to consider it.

11 The lawyers are not under oath. They're not under penalty  
12 of perjury. They have a job to advocate for their clients.  
13 And they're doing their job; but they are not the witnesses in  
14 the case. And what they say is not evidence in the case. So  
15 if they say something different from what you hear from the  
16 witnesses, what governs is what you hear from witnesses. And I  
17 wanted to remind you of that instruction.

18 Judge Alsup is a colleague here in the building. He says  
19 it's so important to spell it out. So the weight of the  
20 evidence to give to lawyers is zero. Z-e-r-o. Zilch.  
21 Z-i-l-c-h. So nothing. They play a very prominent role, and  
22 they get a lot of talking time during trial. That's to help  
23 you interpret the evidence and to help explain it to you; but  
24 their job is to give it to you in the best light possible from  
25 their clients' perspective. And that's what they're doing. So

1 keep that in mind as you hear the evidence going forward in the  
2 case.

3 Ms. Preston will call her next witness, please.

4 **MR. LAFAYETTE:** I think we're calling a witness out  
5 of turn, Your Honor.

6 **THE COURT:** I appreciate that reminder. All right.  
7 The next witness is being called by the Defense. Due to  
8 scheduling challenges, we're allowing the Defense to call this  
9 witness out of turn. Therefore the Defense will be examining  
10 the witness first. And there will be cross-examination by  
11 plaintiff. You should give no consideration to the fact that  
12 it's being done out of order. And this will be evidence, just  
13 as any other evidence that you will hear in the case.

14 Mr. Jordan, if you can come on forward here, we'll swear  
15 you in.

16 **THE CLERK:** Please raise your right hand.

17 HOWARD ALONZO JORDAN,  
18 called as a witness for the Defendants, having been duly sworn,  
19 testified as follows:

20 **THE WITNESS:** I do.

21 **THE CLERK:** Thank you. Please be seated.

22 **THE WITNESS:** Good morning, Your Honor.

23 **THE COURT:** Good morning.

24 **THE CLERK:** Please state your full name and spell  
25 your last name.

1           **THE WITNESS:** Howard Alonzo Jordan. J-o-r-d-a-n.

2           **MR. LAFAYETTE:** Thank you, Your Honor.

3                           **DIRECT EXAMINATION**

4   **BY MR. LAFAYETTE**

5   **Q.** Mr. Jordan, have you ever gone by another name; say,  
6 "Chief"?

7   **A.** Yes, I have.

8   **Q.** And when were you known as "Chief"?

9   **A.** I was known as "Chief" from 2011 to 2013.

10   **Q.** And as Chief, what were you chief of?

11   **A.** I was a Chief of Police for the Oakland Police Department  
12 in Oakland, California.

13   **Q.** And how long were you with the Oakland Police Department?

14   **A.** Twenty-five years.

15   **Q.** And did you become the Interim Chief, under Mayor Quan?

16   **A.** Yes, I did.

17   **Q.** And then were you appointed to become the Chief?

18   **A.** Yes, I was.

19   **Q.** And so in February of 2012 were you the Chief? Permanent  
20 Chief?

21   **A.** Yes, I was.

22   **Q.** And in January you were the Interim Chief?

23   **A.** January of 2012?

24   **Q.** 2012.

25   **A.** Yes, I was.



1 Q. Now, as the Chief, are you responsible for managing the  
2 Police Department?

3 A. Yes, I was.

4 Q. Now, did you at some point did you leave the Police  
5 Department?

6 A. Yes.

7 Q. When was that?

8 A. I retired in August of 2013.

9 Q. So now in that time period that you were either Interim or  
10 the Acting Chief, did it come to your attention that the FBI  
11 was conducting an investigation regarding something referred to  
12 as "the Rainbow Teen Center"?

13 A. Yes. I was.

14 Q. And did you consult with Mayor -- with the City  
15 Administrator with regard to that?

16 A. Yes, I did.

17 Q. There is a book in front of you that's probably the white  
18 binder. And it has something in it that's been referred to as  
19 "Exhibit 3." I'd like you to take a look at that.

20 THE COURT: Are you referring to the Plaintiff's  
21 Exhibit 3?

22 MR. LAFAYETTE: Plaintiff's Exhibit 3, Your Honor.

23 THE COURT: I think it's a blue cover there.

24 MR. LAFAYETTE: It's also -- if that's --

25 (Document displayed.)

1           **THE COURT:** He's getting to it. There you go.

2           **BY MR. LAFAYETTE**

3           **Q.** At the top of the page, there's an e-mail from you where  
4 you say, "Yeah." Do you see that?

5           **A.** Yes, I do.

6           **Q.** And just before that -- it seems to be in response to an  
7 e-mail from Ms. Deanna Santana. Do you see that?

8           **A.** Yes.

9           **Q.** Okay. Do you know if that comment from Ms. Santana was in  
10 relation to something involving the FBI?

11           **MR. SIEGEL:** Objection. Calls for speculation. Lack  
12 of foundation.

13           **THE COURT:** Sustained.

14           **BY MR. LAFAYETTE**

15           **Q.** This comment -- was it in response to a conversation that  
16 you --

17           As you understand it, was it in response to a conversation  
18 that you had had with Ms. Santana?

19           **A.** Yes.

20           **Q.** And what was the conversation about that you had had with  
21 Ms. Santana?

22           **MR. SIEGEL:** Your Honor, again, same objection.  
23 Speculation. Lack of foundation. The document speaks for  
24 itself.

25           **THE COURT:** Overruled.

1 The question is about a conversation. You may answer it.

2 THE WITNESS: Yes. So the conversation was regarding  
3 the FBI's interest in the Pulte investigation.

4 BY MR. LAFAYETTE

5 Q. Thank you.

6 Now, at some point did you come to Ms. Santana in 2013 and  
7 advise her that you had received information relating to  
8 Ms. Preston?

9 A. Yes, I did.

10 Q. And can you share with us what information you relayed to  
11 Ms. Santana?

12 A. Yes, I can.

13 Q. Please do.

14 A. I had a relationship with our union president,  
15 Mr. Barry Donelan. Barry Donelan and I met every Tuesday or --  
16 I'm sorry -- every third Tuesday of the month for coffee, to  
17 discuss things that were related to the police, Police  
18 Department, and to establish a working relationship between the  
19 union and executive management. And that was a practice that  
20 we've had with the -- that I had with the previous union  
21 president. And Barry and I continued that when he became  
22 president of the union.

23 At some point Barry and I were talking, and he told me  
24 that Ms. Preston was undermining Ms. Santana's authority by  
25 providing information that she knew about the negotiations

1 between the police union and the fire to the Fire Department,  
2 in an effort to undermine Ms. Santana. And he specifically  
3 talked about the offer that was on the table regarding a  
4 give-back.

5 Prior to that time, the City had, in a concession  
6 agreement, agreed with the union, in order to save money and  
7 not lay off officers, that the union would have to give back  
8 some of their holidays. Instead of getting paid, they would  
9 just not -- they would work at regular pay, instead of double  
10 time and a half. And the agreement was that at some point when  
11 the City's in better financial situation, that the City would  
12 allow those officers to regain those holiday pay, and not be  
13 furloughed in an effort to save money.

14 So the negotiations were taking place. And Barry Donelan,  
15 the President, told me that Ms. Preston was providing  
16 information -- confidential information -- to the Fire  
17 Department, stating that the -- Ms. Santana was offering the  
18 POA more than what she was offering the Fire Department -- Fire  
19 Department, which was not true. Both unions were --

20 **MR. SIEGEL:** Objection. I'd object to the narrative,  
21 and also the extended hearsay.

22 **THE COURT:** All right. Objection to hearsay is  
23 overruled. Let's have a new question, so that we can have a  
24 question and answer.

25

1 **BY MR. LAFAYETTE**

2 **Q.** So you shared -- did you share this information with  
3 Ms. Santana?

4 **A.** Yes, I did.

5 **Q.** And do you recall approximately when it was that you  
6 shared this information with Ms. Santana?

7 **A.** I believe it was in the summer of 2012; either June or May  
8 or sometime around that point.

9 **Q.** Was this -- that's fine.

10 So now -- and did you make a suggestion to Ms. Santana as  
11 to what she should do?

12 **A.** Yes.

13 **Q.** And what suggestion did you make to Ms. Santana?

14 **A.** I recommended that Ms. Santana conduct an analysis of  
15 Ms. Preston's computer, which she had the authority to do, in  
16 order --

17 **MR. SIEGEL:** Objection. May I ask that the comment  
18 about authority be stricken? This is not responsive, and it's  
19 beyond this witness' ability.

20 **THE COURT:** Overruled.

21 You may continue answering the question.

22 **THE WITNESS:** That she exercise her authority as a  
23 City Administrator to conduct an analysis directing  
24 IT Department to analyze Ms. Preston's computer -- her work  
25 computer -- in order to determine what information she was

1 sharing with others; confidential information she was sharing  
2 with other City employees.

3 **BY MR. LAFAYETTE**

4 **Q.** Now, in addition to the unions coming to you, did  
5 Ms. Brooks come to you with information?

6 **A.** No.

7 **Q.** Did Ms. Brooks come to you regarding the negotiations?

8 **A.** No, she did not.

9 **Q.** Did Mr. Donelan ever say --

10 **MR. LAFAYETTE:** Actually, Your Honor, no further  
11 questions.

12 **THE COURT:** All right. Now some cross-examination  
13 from plaintiff's counsel.

14 **MR. SIEGEL:** Okay. Thank you.

15 **CROSS-EXAMINATION**

16 **BY MR. SIEGEL**

17 **Q.** Now, Mr. Jordan, you're no longer a police officer; are  
18 you?

19 **A.** I'm not.

20 **Q.** And your service as Chief of Police lasted slightly more  
21 than 18 months. Is that right?

22 **A.** Give and take, yes.

23 **Q.** Yeah. It started October 11, and left May of 2013?

24 **A.** Yes.

25 **Q.** Okay. And you had testified that the -- you learned that

1 the FBI was looking into the Rainbow Teen Center?

2 A. Yes.

3 Q. Isn't it true that no arrests were made as a result of  
4 that investigation?

5 A. I'm not aware of any arrests being made.

6 Q. Okay. Now, you met with Barry Donelan on occasion?

7 A. Yes.

8 Q. And he was critical of Ms. Preston. Is that right?

9 A. Yes.

10 Q. He was also critical of you. Is that right?

11 A. I'm not aware of that.

12 Q. Isn't it true that the POA -- the Oakland Police Officers  
13 Association -- made public criticisms of you during the time  
14 you were Chief?

15 MR. LAFAYETTE: Objection. Relevance, Your Honor.

16 THE COURT: Overruled.

17 You can answer.

18 THE WITNESS: There were occasions when they  
19 criticized me, but that's not unusual in this profession.

20 BY MR. SIEGEL

21 Q. Exactly. The unions typically criticize management. Is  
22 that right?

23 A. Typically, yes.

24 Q. Okay. So whether they were criticizing you as Chief, or  
25 Ms. Preston as the head of Employee Relations -- that was kind

1 of to be expected. Is that right?

2 **A.** In some regards, yes.

3 **Q.** Okay. Now, were you involved in supervising the Employee  
4 Relations Department?

5 **A.** Of the City, or the Police Department?

6 **Q.** Of the City of Oakland.

7 **A.** No, I was not.

8 **Q.** Okay. And were you responsible for determining what  
9 Ms. Preston spoke about with the representatives of the various  
10 unions?

11 **A.** No, I was not.

12 **Q.** During the time the negotiation that you refer to -- that  
13 is, the restoring of some of the concessions that the unions  
14 made -- there was a process of determining the value of those  
15 concessions. Is that right?

16 **A.** Yes.

17 **Q.** And part of that process had to do with the fact that you  
18 could calculate the salary given to many City employees on a  
19 daily basis. Correct?

20 **A.** I'm not sure what process they used to calculate that; but  
21 I'm assuming it was, yes.

22 **Q.** Okay. And isn't it true that the Fire Department was  
23 different, because Fire Department employees are not paid on a  
24 daily basis; instead, they're paid on the basis of 24-hour  
25 shifts?



1           **MR. LAFAYETTE:** Objection. Lacking foundation with  
2 this witness. Constitutes hearsay.

3           **THE COURT:** Overruled.

4           He can answer if he knows.

5           **THE WITNESS:** Yes.

6 **BY MR. SIEGEL**

7 **Q.** Okay. And do you know what a sidebar is?

8 **A.** A sidebar?

9 **Q.** A sidebar in connection with labor negotiations.

10 **A.** Yes.

11 **Q.** And isn't it true that a sidebar is when representatives  
12 of the union and representatives of management get together  
13 informally to discuss the issues that may be coming up during  
14 bargaining?

15 **A.** Yes.

16 **Q.** Okay. Now, with respect to your advice to Ms. Santana to  
17 look at Ms. Preston's e-mails -- that wasn't part of your job  
18 as Police Chief: To decide which employees' e-mails should be  
19 looked at. Was it?

20 **A.** It wasn't, but I felt obligated, knowing that information  
21 was being given to other people that was undermining the City  
22 Manager's authority; that I should advise her about that; just  
23 similarly like I would expect, if someone knew about someone  
24 undermining me in that circumstance, that one of my  
25 subordinates would advise me to do the same.

1 Q. Just to be clear, Mr. Jordan, you didn't know -- did you?  
2 -- that LaWanna Preston was undermining the City Administrator?

3 A. Until -- up until Mr. Donelan told me, yes; then I became  
4 aware of that.

5 Q. Mr. Donelan told you that it was his opinion that  
6 Ms. Preston was undermining City Administrator. Correct?

7 A. I don't think it was his opinion.  
8 I think it was factual information that he shared with me.

9 Q. Okay. And you relied on what he told you?

10 A. Yes, I did.

11 Q. You didn't do any independent investigation to determine  
12 whether what Barry Donelan said was true or not?

13 A. I did not, because I didn't feel it was necessary to do  
14 that. He was a credible person, and he wouldn't have any  
15 reason to make something up like that.

16 Q. So likewise, when he criticized your performance as Police  
17 Chief, you accepted what he said was true?

18 MR. LAFAYETTE: Objection as argumentative.

19 THE COURT: Overruled.

20 MR. LAFAYETTE: Relevancy.

21 THE COURT: I think you can answer.

22 THE WITNESS: I accepted it as part of doing  
23 business. I'm critical of the union, as well. So it was  
24 accepted practice that management and union don't always get  
25 along.

1 BY MR. SIEGEL

2 Q. And you took what the union would say, in criticizing you,  
3 with a grain of salt. Correct?

4 A. Depending on -- some -- some of them had merit, and some  
5 didn't.

6 Q. All right. Do you know whether Ms. Santana went through  
7 the procedures required by Oakland City policy when she  
8 accessed Ms. Preston's e-mail?

9 MR. LAFAYETTE: Lacking foundation.

10 THE COURT: Overruled.

11 THE WITNESS: I don't.

12 MR. SIEGEL: Thank you. I have no further questions.

13 THE COURT: All right. Do you have redirect?

14 MR. LAFAYETTE: (Indicating.)

15 THE COURT: Quickly.

16 REDIRECT EXAMINATION

17 BY MR. LAFAYETTE

18 Q. Prior to Mr. Donelan coming to you with this undermining  
19 comment, had anyone else come to you with something like that  
20 before?

21 A. No.

22 MR. SIEGEL: Beyond the scope.

23 THE COURT: Overruled.

24 You can answer again, just so the jury hears.

25 THE WITNESS: No.

1           **MR. LAFAYETTE:** Thank you, Your Honor. That's it,  
2 Your Honor.

3           **THE COURT:** All right. Mr. Jordan, we're going to  
4 take a brief break. And I'm going to give the jurors an  
5 opportunity to ask you any questions -- they write them down --  
6 if they wish to. So we'll take a five-minute recess for the --  
7 actually, let's make it a ten-minute recess. We'll call it our  
8 morning break. Ten-minute recess. And if the jurors wish to  
9 write any questions, they may. We'll return either with  
10 Mr. Jordan or the next witness. Thank you very much. You may  
11 step down. We'll be back in ten minutes. Thank you.

12 (Recess taken from 9:59 a.m. until 10:12 a.m.)

13 (Proceedings were heard out of presence of the jury:)

14           **THE COURT:** All right. We have one question for  
15 Mr. Jordan for the jury, and we'll call the jury in.

16 Mr. Jordan, if you could return to the stand.

17 (Proceedings were heard in the presence of the jury:)

18           **THE COURT:** All right. Please be seated.

19 Mr. Jordan, you remain under oath. This is question  
20 number 8. First question for you from the jury, it has two  
21 parts. I'll read the entire thing and go back to make sure you  
22 heard the whole question.

23 The question is: "Would you continue your meetings with  
24 Mr. Donelan during times when the City was negotiating with the  
25 Police Officers' Association? The second part of the question

1 is in parenthesis, (or the union, if that's different from the  
2 POA.) "

3 So just to restate the entire thing.

4 "Would you continue your meetings with Mr. Donelan during  
5 times when the City was negotiating with the Police Officers'  
6 Association (or the union, if that's different from POA.) "

7 **THE WITNESS:** Yes, I would, and the reason for that  
8 is there were a lot of --

9 **MR. SIEGEL:** Objection, Your Honor. The answer was  
10 complete.

11 **THE COURT:** Overruled. You may explain your answer.

12 **THE WITNESS:** We discussed a number of things other  
13 than labor management issues. We had working conditions, shift  
14 change, disciplinary issues with officers, and a whole host of  
15 things that we talked about. We had -- he had maybe five  
16 items, and I had five items, and that's where we met and  
17 discussed in trying to come to some kind of agreement  
18 irrespective of what was happening with negotiations.

19 **THE COURT:** Thank you. You may step down. Thank you  
20 for being here.

21 **THE WITNESS:** Thank you.

22 **THE COURT:** And we're now returning to the  
23 plaintiff's side of the case, and Ms. Preston will call her  
24 next witness.

25 **MR. SIEGEL:** Can we call Teresa Reed?

1           **THE COURT:** Come on forward. Come right up here,  
2 please. Thank you. Watch your step.

3           **THE CLERK:** Please raise your right hand.

4                           **TERESA REED,**  
5 called as a witness for the **PLAINTIFF**, having been duly sworn,  
6 testified as follows:

7           **THE WITNESS:** I do.

8           **THE CLERK:** Please be seated. Speak clearly into the  
9 microphone, and state your full name, and spell your last name,  
10 please.

11           **THE WITNESS:** My full name is Teresa Lynette Deloach  
12 Reed. My last name is spelled D-E-L-O-A-C-H, Reed, R-E-E-D.

13                           **DIRECT EXAMINATION**

14 **BY MR. SIEGEL:**

15 **Q.** Good morning, Chief Reed.

16 **A.** Good morning.

17 **Q.** You are the chief of the Oakland Fire Department; correct?

18 **A.** Yes, I am.

19 **Q.** And you became the chief on March the 5th, 2012; am I  
20 correct?

21 **A.** That's correct.

22 **Q.** Before becoming chief of the Oakland Fire Department, you  
23 worked for the Fire Department in San Jose; is that right?

24 **A.** That's correct.

25 **Q.** And you were appointed as chief of the Oakland Fire

1 Department by Deanna Santana; is that right?

2 A. That's correct.

3 Q. And you knew Ms. Santana from when the two of you worked  
4 together in San Jose?

5 A. That's correct.

6 Q. Okay. Now, when you came to Oakland, you learned some  
7 things about how labor relations were conducted in Oakland; am  
8 I right?

9 A. I'm -- no.

10 Q. Well, weren't you --

11 A. You mean -- could you clarify that?

12 Q. Sure. Okay. Let me be more specific.

13 When you came to Oakland, you learned that in the City of  
14 Oakland, labor negotiations were conducted by the Employee  
15 Relations Department; is that right?

16 A. I'm aware of that, yes.

17 Q. And you learned that soon after you came to Oakland?

18 A. Correct.

19 Q. And you learned also that before a department, such as the  
20 Fire Department or any other department, made a proposal at the  
21 bargaining table to a union, the City Council's authorization  
22 was required?

23 A. I learned that it was Employee Relations' responsibility  
24 for that.

25 Q. Let me repeat my question.

1 A. Okay.

2 Q. Did you learn, when you came to Oakland, that before a  
3 proposal could be made at the bargaining table, the City  
4 Council's authorization was required?

5 A. Yes.

6 Q. And you learned that in part from your senior staff; is  
7 that right?

8 A. Correct.

9 Q. You had people on your staff, specifically Donna Hom and  
10 Mr. Hoffman, who made sure that you understood the procedures;  
11 is that right?

12 A. Well, I -- I'm kind of -- you know, you make it sound as  
13 if we had this conversation and they walked me through what the  
14 process was, and I do recall that there was an issue that was  
15 on the table when I first came to Oakland regarding brownouts,  
16 and during those brownouts, after having conversations with  
17 Local 55, we thought of some different ways to do brownouts,  
18 but the brownouts was already negotiated that they were to be  
19 done specifically this way, and it was in a side letter that  
20 had been signed and agreed to. And Donna Hom did tell me that  
21 any changes to that agreement, that I would have to go through  
22 Employee Relations and through Council, yes.

23 Q. Okay. Great. Now, you mentioned the issue of brownouts.  
24 Brownouts refers to a process by which a particular fire  
25 station may be closed for a period of time in order to save



1 money?

2 **A.** And it depends, sometimes it's a fire station if there's  
3 only one engine company located at that fire station, it may  
4 just be a company if that fire station has two companies  
5 located there.

6 **Q.** Okay. And what you mean by that is that some fire  
7 stations have fire engines, some have fire trucks, and some  
8 have both?

9 **A.** Some fire stations have fire engines, and some fire  
10 stations have both, fire engines and trucks.

11 **Q.** Okay. Great. In the binder that's in front of you with  
12 the blue cover, would you please look at tab 11?

13 **A.** I have it.

14 **Q.** Do you recognize that document?

15 **A.** Yes, this is the document that I was referring to.

16 **Q.** Okay. So this is an email message that you wrote to  
17 Daryelle Lawanna Preston on March 23, 2012?

18 **A.** Correct.

19 **MR. SIEGEL:** Your Honor, I'd offer Exhibit 11.

20 **MR. LAFAYETTE:** No objection.

21 **THE COURT:** Exhibit 11 is admitted in evidence.

22 (Trial Exhibit 11 received in evidence)

23 **BY MR. SIEGEL:**

24 **Q.** And this email was written quite soon after you started  
25 working in the City of Oakland; correct?

1 A. Correct.

2 Q. And you knew that Lawanna Preston was the person that you  
3 needed to deal with over issues relating to union negotiations  
4 and related matters; was that right?

5 A. I'm going to guess that my staff knew Lawanna, and I was  
6 advised that this was the process.

7 Q. Okay.

8 A. And I don't believe that I had -- I don't recall if I had  
9 known that Lawanna was the person.

10 Q. Okay. But either Ms. Hom or Mr. Hoffman or both of you --  
11 or both of them made it clear that you should be in touch with  
12 Ms. Preston?

13 A. Through this email, yes.

14 Q. Okay. Fair enough. So I'd like to move ahead.

15 Were you familiar with something called the Paramedic  
16 Support Program?

17 A. Correct.

18 Q. And that was a program that would provide premium pay to  
19 certain personnel in the Fire Department; correct?

20 A. It's a program that had been in existence since 1999, and  
21 yes, they did get a premium pay to participate.

22 Q. Okay. And when you say premium pay, that would mean  
23 something that was in addition to their normal pay?

24 A. Correct.

25 Q. So the Paramedic Support Program actually cost the Fire

1 Department and the City of Oakland money?

2 **A.** Correct.

3 **Q.** So when the premium pay program was continued during July  
4 of 2013, that meant that the persons who participated in that  
5 program would get some additional money; correct?

6 **A.** That's -- yes, that is correct.

7 **Q.** Okay. Now, your understanding, in spring of 2013, was  
8 that the program was going to expire as of June 30; is that  
9 right?

10 **A.** Correct.

11 **Q.** And fair to say that it was your intent to let the program  
12 expire?

13 **A.** Correct.

14 **Q.** But you were directed to have a conversation with the  
15 union about the extension of the program; correct?

16 **A.** Correct.

17 **Q.** And the person who directed you in May or June of 2013 to  
18 have a conversation with the union about extending the  
19 Paramedic Support Program was your direct supervisor Deanna  
20 Santana; correct?

21 **A.** There was no conversation about extending the program.  
22 The conversation just was about having a conversation with  
23 them.

24 **Q.** Okay.

25 **A.** There was no specifics in regards to what to do with the

1 program.

2 Q. Okay. But in May of 2013, Ms. Santana directed you to  
3 have negotiations with Local 55; is that correct?

4 A. That's not correct. She just asked us to have a  
5 conversation with them, to meet with them.

6 Q. So I'm confused. How did -- how was my statement  
7 incorrect?

8 A. Well, negotiations means that you would have to have  
9 Employee Relations at the table.

10 Q. I see. So she just told you to meet with them?

11 A. Correct.

12 Q. Okay. And to meet with them about the Paramedic Support  
13 Program?

14 A. Correct.

15 Q. And you thought, did you not, that because Ms. Santana  
16 directed you to meet with Local 55 about the Paramedic Support  
17 Program, that that gave you the authority to meet with them?

18 A. Well, I -- the authority to meet with them? Yes.

19 Q. Yes?

20 A. Well, actually, I don't need the City Administrator's  
21 authority to meet with 55, because we typically have meetings  
22 once a month, but for this particular thing, yes, she did ask  
23 us to have a conversation with 55 in regards -- that was my  
24 impression. That was my understanding, yes.

25 Q. And you felt, since she was your boss, you didn't need

1 anyone else's permission to have that conversation with Local  
2 55?

3 **MR. LAFAYETTE:** Cumulative, Your Honor.

4 **THE COURT:** Overruled. You may answer.

5 **THE WITNESS:** Could you ask the question again?

6 **BY MR. SIEGEL:**

7 **Q.** Sure. You understood, because Ms. Santana was your boss,  
8 and she told you to meet with them, you didn't need anyone  
9 else's permission; correct?

10 **A.** Correct.

11 **Q.** Okay. Now, is it fair to say that there was a meeting set  
12 up for Friday, June the 28th?

13 **A.** I know there was a meeting on June 28th, yes.

14 **Q.** Okay. You don't recall if that was a Friday?

15 **A.** No, I don't.

16 **Q.** Okay. And you, I believe, were not present at that  
17 meeting, correct?

18 **A.** Correct.

19 **Q.** But there was some email communications that you were part  
20 of prior to that meeting; is that right?

21 **A.** There was a lot of emails. Do you have one specifically?

22 **Q.** I do. I do.

23 **A.** Okay.

24 **Q.** In that big black binder.

25 **A.** This one here?

1 Q. Yes. Would you please look at Exhibit 1Z?

2 A. Okay.

3 Q. Now, once you get to Exhibit 1Z, would you turn to the  
4 page that's numbered at the bottom 1042?

5 A. Okay.

6 Q. Okay. And do you see that 1042 includes some email  
7 communications between Zac Unger and Trinette Gist Skinner?

8 A. Yes.

9 Q. And who is Zac Unger?

10 A. Zac Unger is the vice-president of Local 55.

11 Q. And Trinette Gist Skinner is who?

12 A. Trinette Gist Skinner is the Division Manager of  
13 Administrative Services for the Oakland Fire Department.

14 Q. Okay. And do you see that you were copied on these email  
15 communications between Zac Unger and Trinette Gist Skinner on  
16 June the 24th, 2013?

17 A. Yes.

18 MR. SIEGEL: Your Honor, I would like to offer  
19 page 1042 of Exhibit 1Z.

20 THE COURT: That exhibit is already in evidence, so  
21 you may show the jury.

22 MR. SIEGEL: All right.

23 Q. So I'd like to just have you look at this for a second.  
24 Before I put it up, do you see that Zac Unger says:

25 "Trinette, quote, I am available any time on the 28th.

1 Will we have authorization to discuss all outstanding issues,  
2 including money, at that meeting?"

3 Do you see that?

4 A. Yes.

5 Q. Okay. And you received that email or a copy of that email  
6 from Mr. Unger, didn't you?

7 A. Yes.

8 Q. Okay. And you then sent Trinette Gist Skinner, Mark  
9 Hoffman, and Stewart McGehee to the meeting on June 28th?

10 A. Well, I know that there was a meeting prior to, and so  
11 these were the individuals that the department had that was  
12 familiar with it. So yes, they did attend the meeting on the  
13 28th, to my understanding. I was not there.

14 Q. And that was at your direction, correct?

15 A. I can't specifically say on this meeting on the 28th that  
16 I gave them directions to go, because there was another meeting  
17 prior to that, and I think the individuals that attended the  
18 meeting prior to just continued to meet; and it's the same  
19 with -- we see Tracey Chin is also copied on this email. I  
20 wasn't aware that she was a part of this, and also Winnie  
21 Anderson was part of this email, and so we can say that all of  
22 them, because this is how it was communicated, that they all  
23 may have attended the meeting, because it looks like they were  
24 all copied in previous emails.

25 Q. Okay. And after that meeting, excuse me, after the

1 meeting on June 28th, someone came back to you and said, well,  
2 we reached an agreement; correct?

3 A. I don't recall the conversation. Reaching agreement on  
4 what?

5 Q. For extending the Paramedic Support Program for one month?

6 A. I don't recall.

7 Q. Okay. In the binder that is with the blue cover, would  
8 you look at Exhibit 17, please?

9 A. Okay.

10 Q. All right. Now, you recognize Exhibit 17; correct?

11 A. Yes, I do.

12 Q. Okay. And you signed it?

13 A. Yes, I did.

14 Q. Someone from your staff came to you and said: Chief, at  
15 the meeting on June 28th, we reached an agreement, and we need  
16 your signature; is that the way it happened?

17 A. Well, I don't know if those were the words, but I did sign  
18 it.

19 Q. Okay. Well, why did you sign it then?

20 A. Because we were -- from the conversations that I've had,  
21 they were looking for an extension, and they agreed that they  
22 reached this extension, so I signed it.

23 Q. Okay. And after you signed that agreement, were you  
24 advised by someone that a mistake had been made?

25 A. Yes.



1 Q. And who were you advised of that?

2 A. Winnie Anderson.

3 Q. Okay. Would you look at Exhibit 2G, please?

4 A. 2?

5 Q. G, in the big binder.

6 A. Okay.

7 Q. Do you recognize that document?

8 A. Yes, I do.

9 Q. And does that include a communication to you by Winnie  
10 Anderson?

11 A. Yes.

12 Q. And as a result of receiving that communication, did you  
13 realize that a mistake had been made?

14 A. I don't know if you could say I realize or was I told the  
15 mistake was made. I think in this email I was told a mistake  
16 was made.

17 Q. And the mistake was that you had reached this agreement on  
18 June 28th, even though the Council had not authorized it in  
19 advance?

20 A. Right. But the thought, too, was that because Employee  
21 Relations was at the table, I thought the Employee Relations  
22 were checking all the boxes that needed to be checked in  
23 regards to any agreement.

24 Q. Well, I don't know about checking boxes, but I believe you  
25 said before that you thought you had all the authority you

1 needed, because Ms. Santana had directed you to meet with Local  
2 55.

3 **MR. LAFAYETTE:** Objection. Misstates the witness'  
4 testimony. It's argumentative.

5 **THE COURT:** Overruled. The witness can answer the  
6 question.

7 **THE WITNESS:** What I also understood is that Employee  
8 Relations was responsible for any negotiations, and Employee  
9 Relations was at the table and actually drew up the agreement  
10 that myself, members of my staff, members of Local 55, and  
11 Employee Relations signed.

12 **BY MR. SIEGEL:**

13 **Q.** Okay. Well, let me ask you this.

14 **A.** Okay.

15 **Q.** Did you tell Trinette Gist Skinner that Deanna Santana had  
16 directed you to meet with Local 55?

17 **A.** I told Trinette that I got the impression from the  
18 conversations I had with Deanna that she wanted us to talk,  
19 yes.

20 **Q.** Okay. And do you know whether Ms. Gist Skinner told  
21 Winnie Anderson that you had been directed or given  
22 authorization by Deanna Santana to sit down with Local 55?

23 **A.** I don't know what conversations Trinette may have had with  
24 Winnie.

25 **Q.** Okay. And you knew, at the time you signed Exhibit 17,

1 that the extension of the Paramedic Support Program was going  
2 to require that the people who participated in it be paid  
3 during July of 2013?

4 **A.** Correct.

5 **Q.** Now, after the agreement was signed on June 28th, did you  
6 have a conversation with Ms. Santana regarding the making of  
7 the agreement with Local 55?

8 **A.** Could you ask that again?

9 **Q.** Did you have a conversation with Deanna Santana after  
10 June 28th regarding the agreement with Local 55?

11 **A.** I believe the next conversation I had with Ms. Santana was  
12 after we were told that we didn't have authorization to make  
13 this agreement with 55, and so there was a conversation, an  
14 email to her stating -- because I believe it stated in the  
15 email that I received from Winnie that we needed authorization  
16 either from the City Administrator's Office or Employee  
17 Relations in order to negotiate. And so after I was told that  
18 we didn't have authorization, there was contact with  
19 Ms. Santana clarifying what I understood in regards to having  
20 that conversation.

21 **Q.** And in your communications with Ms. Santana, you said to  
22 her I thought I had authority to do this, because you told me  
23 to do it?

24 **MR. LAFAYETTE:** Objection.

25 **THE WITNESS:** I don't recall what the exact words

1 were.

2           **THE COURT:** Objection what?

3           **MR. LAFAYETTE:** Question is vague.

4           **THE COURT:** You may answer. Overruled.

5           **THE WITNESS:** I don't recall what the exact words  
6 were. I believe I sent her an email.

7 **BY MR. SIEGEL:**

8 **Q.** I know you -- and I'm not trying to give you a test here.  
9 Did you say to Ms. Santana: *I thought you gave me the*  
10 *authority to do this?*

11 **A.** I sent Ms. Santana an email, and I can't say verbatim what  
12 that email states.

13 **Q.** Okay. Let me ask you this then. Do you recall saying to  
14 Ms. Santana: "I have an email from you to meet with Local 55  
15 regarding the PSP program. Your email asked me to let you know  
16 when we are scheduled to meet. Did I misinterpret your  
17 direction?"

18 **A.** Is that in an email form? Is that an email that you're  
19 quoting or --

20 **Q.** Indeed it is.

21 **A.** Okay. Then if I could see that, then I can state for sure  
22 if that's what I said.

23           **MR. SIEGEL:** Okay. Your Honor, to refresh the  
24 witness's recollection, I would like to show her Exhibit 4 to  
25 the deposition of Deanna Santana.

1           **THE COURT:** Is that an email?

2           **MR. SIEGEL:** Yeah.

3           **MR. LAFAYETTE:** Could I see?

4           **MR. SIEGEL:** Yeah, you can see.

5           **THE WITNESS:** (Witness examines document.) Yep.

6 This is what I sent to her.

7 **BY MR. SIEGEL:**

8 **Q.** Okay. And did I quote you correctly?

9 **A.** It states: "I have an email from you to meet with 55  
10 regarding the PSP program. Your email asked me to let you know  
11 when we were scheduled to meet. Did I misinterpret your  
12 direction? See below."

13 **Q.** Now, after the June 28th agreement was signed, did you  
14 hear from Lawanna Preston?

15 **A.** No.

16 **Q.** Isn't it true that Lawanna Preston indicated to you that  
17 an error had been made?

18 **A.** The first email that I received I recall was from Winnie  
19 Anderson.

20 **Q.** I'm asking you about one from Lawanna Preston.

21 **A.** I don't recall an email from Lawanna.

22 **Q.** Do you recall that I took your deposition on March the 20,  
23 2015?

24 **A.** I do recall taking a deposition.

25 **Q.** Okay. And you were -- sworn an oath and agreed to tell

1 the truth during that deposition?

2 **A.** Yes.

3 **Q.** And do you recall that I asked you whether, after the  
4 agreement was signed, whether you had any conversations with  
5 Ms. Preston about the agreement?

6 **MR. LAFAYETTE:** Objection, relevancy.

7 **THE COURT:** Overruled. It's relevant, but it's a  
8 different question than the one you just asked in court.

9 **BY MR. SIEGEL:**

10 **Q.** Okay. Well --

11 **THE COURT:** Emails and conversations are not the same  
12 question.

13 **BY MR. SIEGEL:**

14 **Q.** After the agreement was signed, did you have any  
15 conversations with Ms. Preston about the agreement?

16 **A.** Yes, I did.

17 **Q.** And do you recall whether she indicated to you that  
18 signing the agreement was not appropriate, because Council had  
19 not approved?

20 **A.** I don't recall having that conversation with Lawanna. The  
21 conversation that I recall was more along the lines: What is  
22 the process, and so we can make sure that we follow the correct  
23 process.

24 **Q.** Okay. And did Ms. Preston indicate to you what had to be  
25 done in order to fix the problem?

1 A. I don't -- I don't recall. All I do recall is that we  
2 went through and had to -- got on the schedule to go to closed  
3 session.

4 Q. Okay. And you went to the City Council; correct?

5 A. Correct.

6 Q. And the City Council approved the agreement retroactively;  
7 correct?

8 A. Yes.

9 Q. And so the members of the Fire Department who participated  
10 in the Paramedic Support Program in fact received the money  
11 that was due them under that program for July of 2013?

12 A. Correct.

13 Q. So the problem was resolved?

14 A. Well, to an extent, because the negotiations wasn't over,  
15 just the extension.

16 Q. Right.

17 A. So the problem was resolved in regards to that agreement;  
18 correct.

19 Q. Okay. Now, after you learned that there had been a  
20 problem in entering into the agreement, did you tell people in  
21 Local 55 that we have a problem here?

22 A. I may have called 55 and advised them, yes.

23 Q. Okay. And would it be fair to say that they were quite  
24 unhappy about the fact that they had signed an agreement and  
25 then later learned that the agreement was improper?

1 A. Yes, they were, and so were we.

2 Q. Everyone was unhappy; correct?

3 A. Yes.

4 Q. And would it be fair to say this added to ongoing problems  
5 between the Fire Department and Local 55?

6 MR. LAFAYETTE: Objection, calls for an opinion.

7 THE COURT: Overruled.

8 THE WITNESS: Could you repeat the question?

9 BY MR. SIEGEL:

10 Q. Yeah. Isn't it true that the situation that had occurred  
11 with the agreement to extend the Paramedic Support Program  
12 added to existing problems between you and the Firefighters  
13 union?

14 MR. LAFAYETTE: Objection.

15 THE WITNESS: I'm really not sure how to answer,  
16 because then I would have to speak for Local 55.

17 THE COURT: Please, one moment. What is the  
18 objection?

19 MR. LAFAYETTE: It would require her to speculate.

20 THE COURT: All right. Then say that. Overruled.  
21 If you know the answer, you can answer it. Go ahead.

22 THE WITNESS: I don't know what Local 55 was feeling.

23 BY MR. SIEGEL:

24 Q. Fair enough. But you did learn that they had criticisms  
25 of your leadership of the department; correct?



1 A. I knew that Local 55 had some concerns, yes, they did.

2 Q. And those were criticisms; right?

3 MR. LAFAYETTE: Objection, relevance, Your Honor.

4 THE WITNESS: I know that Local 55 --

5 THE COURT: Hold on. Overruled. You may answer.

6 THE WITNESS: -- had some concerns.

7 BY MR. SIEGEL:

8 Q. But not criticisms?

9 A. Well, I don't -- when you talk about criticisms, I mean,  
10 that could be like the whole range of things, and a lot of  
11 times when you criticize people, you may criticize someone to  
12 someone else, and the issues that we spoke to were very  
13 specific.

14 Q. Okay. Deanna Santana told you that Local 55 had conveyed  
15 to her criticisms that Local 55 had of you; correct?

16 MR. LAFAYETTE: Objection, hearsay.

17 THE COURT: Sustained.

18 BY MR. SIEGEL:

19 Q. Okay. Lawanna Preston instructed the Fire Department on  
20 how negotiations should proceed; is that right?

21 A. There was an email, to my recall, that was sent by  
22 Vice-President Zac Unger, and I followed up with that email to  
23 Lawanna detailing the -- asking her to detail the steps that we  
24 needed to take to make sure that as we moved this process  
25 forward, that it went correctly.

1 Q. Okay. And she did that; right?

2 A. Yes.

3 Q. Okay. And would you agree that in your interactions with  
4 Ms. Preston regarding negotiations, she behaved in a  
5 professional manner?

6 A. During what negotiations?

7 Q. During all the negotiations that you had with Local 55  
8 since you became fire chief up until the time Lawanna Preston  
9 was fired.

10 A. I was in one negotiations which was the Promoted Support  
11 Paramedic Program. Lawanna stated to me that Employee  
12 Relations is the bargaining representative for the City, and  
13 that they are responsible for doing all bargaining.

14 When we went into -- to bargaining with 55 to discuss  
15 salary, I ended up being the one during the bargaining, and  
16 Ms. Preston did not participate, though she was in the room,  
17 she did not participate in those bargaining efforts. And so I  
18 was a little confused at that time, because it was -- she was  
19 very clear, saying that she's the -- her office was the chief  
20 negotiators for the City, but during that negotiations, she did  
21 not participate as the chief negotiator.

22 Q. Okay. Do you recall meeting with Ms. Preston to talk  
23 about the whole Paramedic Support Program process and asking  
24 her to sit down and explain to you and your staff what the  
25 process is, so we make sure that we don't make that mistake

1 again?

2 A. Correct.

3 Q. Okay. And was that at some point after July 5th, 2013?

4 A. I don't recall, but I know that it was after everything  
5 had come to light.

6 Q. Regarding the June 30 agreement?

7 A. Correct.

8 Q. Okay. And how did Ms. Preston conduct herself in that  
9 conversation with members of the Fire Department?

10 A. She's very professional. You know, she told us how it  
11 worked. She spoke about her role and what Employee Relations  
12 were responsible for, and as mentioned, she stated that  
13 Employee Relations was the chief negotiators for the City.

14 Q. Okay. And were there any problems in your working  
15 relationship with Lawanna Preston?

16 A. Aside from that issue right there with the Promoted  
17 Support Paramedic Program, no.

18 Q. Do you recall ever complaining about her performance, that  
19 is about Lawanna Preston's performance to Deanna Santana?

20 A. I don't recall.

21 Q. You don't recall doing that, do you?

22 A. No, I don't recall.

23 Q. And then finally, would you look at Exhibit 22 in the  
24 binder with the blue front?

25 A. Okay.

1 Q. Is Exhibit 22 a couple of email messages between your  
2 department or within your department concerning the  
3 notification to Local 55 regarding what had occurred with  
4 respect to the Paramedic Support Program?

5 A. Okay.

6 Q. Is it?

7 A. Yes.

8 MR. SIEGEL: Your Honor, I would offer Exhibit 22.

9 MR. LAFAYETTE: Just a second, Your Honor.

10 THE COURT: It's also 2K.

11 MR. LAFAYETTE: 2K, no objection, Your Honor.

12 THE COURT: All right. Exhibit 22 is admitted in  
13 evidence.

14 (Trial Exhibit 22 received in evidence)

15 MR. SIEGEL: Thank you. I have no further questions.

16 THE COURT: Cross-examine.

17 MR. LAFAYETTE: Yes, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. LAFAYETTE:

20 Q. Good morning, Chief Reed.

21 A. Good morning.

22 Q. When you came to the City of Oakland, how long had you  
23 been working in Fire?

24 A. 23 years.

25 Q. And how long have you been a chief -- you've been a chief

1 at Oakland since March 2012?

2 A. Yes.

3 Q. And when you were the chief of Fire -- well, what position  
4 did you hold before chief in Oakland?

5 A. I was the Assistant Chief.

6 Q. And as the Assistant Chief, how many people did you have  
7 under your command?

8 A. I had all of our operations bureau, so it was close to  
9 650.

10 Q. Okay. And so when you came to Oakland -- well, let's just  
11 fast forward to this issue.

12 At any point in time prior to June 28, did anyone come to  
13 you and tell you that there was something amiss with regard to  
14 signing the TA, the extending the term of the contract by 30  
15 days?

16 A. Before June 28th?

17 Q. Yes.

18 A. No.

19 Q. Was that something that you would have expected Labor  
20 Relations to communicate to you?

21 A. Yes, because Labor Relations drew up the TA and presented  
22 it to 55, and if there was an issue with it at that time, I  
23 would have thought Employee Relations would have identified  
24 that when the request was even made to draw up the TA.

25 Q. And did you personally handle that through June 28th all

1 the discussions taking place with the union and with Labor  
2 Relations?

3 A. I didn't handle any of those discussions. In fact, I  
4 wasn't present at any of those discussions.

5 Q. Now, let's get to what happens afterwards. I want to  
6 direct your attention to a document, which has been previously  
7 marked as Exhibit 3F.

8 Do you have 3F in front of you?

9 A. I have it.

10 Q. So if I understand it, the City Council retroactively  
11 extended the Paramedic Program for an additional 30 days until  
12 July 30 for this issue to be resolved as to what would happen  
13 going forward; is that accurate?

14 A. Correct.

15 Q. And did you work with people to make sure that by July 30,  
16 that this issue would be resolved?

17 A. We actually knew that we weren't going to resolve it by  
18 July 30th, but the team still worked together, my staff and  
19 Employee Relations.

20 Q. When was it actually finally resolved?

21 A. I believe sometime in September.

22 Q. Is Exhibit 3F the document memorializing the date upon  
23 which this issue is finally resolved?

24 A. (witness examines document) Yes.

25 Q. So now, I'd like to direct your attention to a few other

1 documents. Can you take a look at Exhibit 2U? Well, let me  
2 just ask you. Were there difficulties getting this --  
3 actually, go to 2M.

4 **A.** 2?

5 **Q.** M. Exhibit 2M, is that an email that commences on page 3  
6 from you to Zac Unger?

7 **A.** I'm sorry. Could you repeat? And also if you could speak  
8 up a little --

9 **Q.** Okay. I'll try that.

10 **A.** -- louder.

11 **Q.** 2M.

12 **A.** Um-hm.

13 **Q.** And can you look at page 3?

14 **A.** 1058 at the bottom?

15 **Q.** Yes, 1058.

16 **A.** Okay.

17 **Q.** Is that an email from you to Zac Unger?

18 **A.** (witness examines document) There's a couple of emails on  
19 this page, so I'm trying to see which ones --

20 **Q.** I will start at the bottom.

21 **THE COURT:** Just one second. We're in 2M, as in  
22 Mary.

23 **MS. MEHTA:** Thank you.

24 **THE COURT:** Go ahead.

25 **MR. LAFAYETTE:** Oh, Thank you, Your Honor.

1 Q. The first one at the bottom of the page is an email from  
2 Zac Unger to you?

3 A. Right.

4 Q. And he's asking you what's the discussion -- paramedic  
5 discussion from last night's council meeting?

6 A. Actually, it looks like that one --

7 Q. I'll simplify this. Do you remember this email string?

8 A. I do remember this email string.

9 MR. LAFAYETTE: I'd like to move this in evidence,  
10 Your Honor.

11 THE COURT: Any objection?

12 MR. SIEGEL: No objection.

13 THE COURT: Exhibit 2M is admitted into evidence.

14 (Trial Exhibit 2M received in evidence)

15 BY MR. LAFAYETTE:

16 Q. Now, at some point in time in this email string, did you  
17 indicate to the union that the union needed to deal with  
18 Lawanna Preston for purposes of going forward?

19 And I draw your attention to page 2 near the bottom here  
20 (indicating)?

21 A. Right.

22 Q. You write: "It appears to me, to get on the same page  
23 regarding the process, since I am new to this, I am going to  
24 refer to Trinette or Lawanna to explain, to define the process  
25 in regard to next steps prior to L55 membership vote."



1 A. Correct.

2 Q. And so were you advising the union and everyone else that  
3 for purposes of going forward, that it was going to be Labor  
4 Relations that was going to be basically laying out the  
5 process?

6 MR. SIEGEL: Your Honor, I'd have to object. It  
7 misstates the email. She was advising Mr. Unger, not everyone  
8 else.

9 THE COURT: Overruled. The witness can answer in her  
10 own words.

11 THE WITNESS: Yes, we were -- yes, that we had to get  
12 on the same page and have an understanding with Employee  
13 Relations of how we move this forward.

14 BY MR. LAFAYETTE:

15 Q. And so the email up above, you see an email dated July 11,  
16 2013 at 10:21 a.m., is that an email from Mr. Unger to you and  
17 others, including Ms. Preston?

18 A. Correct.

19 Q. In the email is he now addressing to Ms. Preston the  
20 issues about how you proceed going forward?

21 A. Correct.

22 Q. Go to the first page. Is the first page in fact an email  
23 from Ms. Preston that outlines the process for going forward?

24 A. Yes.

25 Q. So she advises that the City will have authorized

1 representatives at the table; right?

2 A. Um-hm.

3 Q. She advises that the Council has authorized the extension  
4 of the side letter until July 30?

5 A. Yes.

6 Q. She then advises that under something -- "under City  
7 Resolution 55881, Employee Relations Officer means the City  
8 Manager and/or his designated representative. Pursuant to the  
9 resolution, I am designated as the Employee Resolutions  
10 Relations Officer and have the authority to sign the tentative  
11 agreements on behalf of the City."

12 A. Correct.

13 Q. And then she lays out a process about -- for purposes of  
14 going forward, at what point you need to get authorization from  
15 Council?

16 A. Yes.

17 Q. Now, one of the questions that Mr. Unger posed in his  
18 email is "What is the mechanism for signing the second  
19 extension it now appears we will need? How can we ensure that  
20 that extension will be valid."

21 Did you understand that Ms. Preston was stating in part  
22 that she could sign the extension, and that it may require  
23 Council approval?

24 A. Correct.

25 Q. Now, the agreement did not get resolved by the 30th, did

1 it, this issue?

2 **A.** Correct.

3 **Q.** And did the union express dissatisfaction that  
4 notwithstanding Ms. Preston's comments, this issue had not been  
5 resolved?

6 **A.** Yes, I do recall an email that spoke to the fact that the  
7 issue hadn't been resolved yet.

8 **Q.** Now, did the union express concern to you as to why at the  
9 end of July they were still at the point that they didn't have  
10 agreement, notwithstanding the point -- the fact that they had  
11 communicated with Winnie Anderson and Ms. Lawanna Preston about  
12 trying to get this resolved?

13 **A.** I believe there is an email to that effect. I recall an  
14 email to that effect.

15 **Q.** Could you take a look at Exhibit 2U? Does Exhibit 2U  
16 refresh your recollection?

17 **A.** Yes.

18 **Q.** That Zac Unger wrote to you "advising that in both written  
19 and oral form, I have issued repeated reminders about this  
20 deadline --

21 **THE COURT:** One moment, counsel. There's an  
22 objection to this document before trial, which you have not  
23 resolved. Also before you start reading it out loud, you have  
24 to deal with the objection.

25 **MR. LAFAYETTE:** I appreciate that.

1           **MR. SIEGEL:** Your Honor, we withdraw the objection,  
2 and it may be admitted.

3           **THE COURT:** All right. You may proceed then.

4           **MR. SIEGEL:** So is it admitted, though?

5           **THE COURT:** Are you moving it into evidence?

6           **MR. LAFAYETTE:** Not at this point, Your Honor.

7           **THE COURT:** All right. Go ahead with your questions.

8           **MR. SIEGEL:** Well, then I object to it being read if  
9 it's not in evidence.

10           **THE COURT:** All right. Which way are you going to go  
11 on this one? Are you objecting or not objecting to the  
12 document?

13           **MR. SIEGEL:** I'm asking that it be admitted into  
14 evidence without objection, and I'm also saying that the  
15 exhibit should not be read if it is not in evidence.

16           **THE COURT:** Exhibit 2U is admitted in evidence. You  
17 may question the witness about it.

18           (Trial Exhibit 2U received in evidence)

19 **BY MR. LAFAYETTE:**

20 **Q.** Now, do you understand that at some points in time people  
21 complain to you directly?

22 **A.** Correct.

23 **Q.** And when they complain to you, you understand that the  
24 complaint is related to the people who are under your command?

25 **A.** Correct.

1 Q. Is this one of those types of communications?

2 A. Yes.

3 Q. And so the complaint is to you, and it names you. As of  
4 this date, had you delegated responsibility for handling this  
5 matter to Labor Relations or had Labor Relations assumed  
6 control?

7 A. Yes.

8 Q. And Ms. Preston in an earlier email had so stated; right?

9 A. Yes.

10 Q. And so now you get this document where the union is saying  
11 "in both written and oral form, I have issued repeated  
12 reminders about this deadline to you, Stewart McGehee, Winnie  
13 and Lawanna. I'm mystified as to why we again find ourselves  
14 on the brink of chaos due to a completely foreseeable much  
15 discussed deadline."

16 Did you have an understanding as to who it was that was  
17 supposed to be helping you meet this deadline?

18 A. Well, I knew it was Employee Relations, because they were  
19 the negotiators.

20 Q. So now you're on July 31?

21 A. Yes.

22 Q. The TA that was in place only applied up until July 30;  
23 right?

24 A. Correct.

25 Q. Did Ms. Preston get another extension?

1 A. I do recall another extension.

2 Q. Do you know if it took place before this date of this  
3 letter?

4 A. I don't recall.

5 Q. Do you know if she was able to get Council approval for  
6 that extension?

7 A. Yes.

8 Q. And when did she get it for the additional extension?

9 A. I don't recall, but I do recall being in closed session.  
10 You know, I went to closed session, and I don't recall if  
11 Ms. Preston was there or not asking for another extension.

12 Q. Okay. Now, at some point did you advise the union that  
13 the agreement -- I'd like you to take a look at Exhibit 2G.

14 A. 2G. You said G, as in George?

15 Q. G, as in George.

16 A. Okay. I have it.

17 Q. Is 2G an email that you sent at the top of the page?

18 A. Yes, it is.

19 Q. And did you send that email in response to an email at the  
20 bottom of the page from Winnie Anderson?

21 A. Correct.

22 Q. And did you, in reaction to the email that you got from  
23 Winnie Anderson, advise the union that the TA signed on  
24 June 28th wasn't enforceable?

25 A. I do recall speaking to 55 to that extent, yes.

1           **MR. LAFAYETTE:** So at the bottom -- I think this is  
2 in evidence, Your Honor.

3           **THE COURT:** It is.

4 **BY MR. LAFAYETTE:**

5 **Q.** The bottom email states: "Dear Teresa, I have received an  
6 email from the City Administrator, and the Department had no  
7 authorization to sign an extension or have had the conversation  
8 with Local 55 in regards to the PSP program."

9           Were you surprised by that?

10 **A.** I was.

11 **Q.** She writes, at the last paragraph: "I understand that  
12 Local 55 is taking this to the membership for a vote, and it  
13 would be imperative that you contact Local 55 immediately to  
14 stop this vote. Thank you for your attention to this matter."

15           Could I ask you a question?

16 **A.** Sure.

17 **Q.** The way things work at the City, should that have been  
18 something handled by Labor Relations to contact the union and  
19 tell the union that they couldn't do a vote?

20 **A.** Employee Relations is the -- through, you know, trial and  
21 error, Employee Relations is the bargaining group for the City,  
22 so those conversations that should have been Employee  
23 Relations, but we found ourselves doing a lot of that work  
24 ourselves. And with this, my surprise came because from the  
25 beginning, Employee Relations was at the table, and at any time

1 Employee Relations could have said *you guys shouldn't even be*  
2 *having this conversation, because, you know, we haven't*  
3 *received authorization.* But that was never stated until after  
4 the TA was signed, a TA that was drawn up and presented by  
5 Employee Relations. So I was, when I received this email, I  
6 was confused and surprised.

7 **MR. LAFAYETTE:** Okay. Now -- Your Honor, I don't  
8 think I have any other questions of this witness.

9 **THE COURT:** Thank you.

10 Mr. Siegel, do you have any further questions within the  
11 scope of cross?

12 **MR. SIEGEL:** I do not.

13 **THE COURT:** All right. We'll take a brief break for  
14 the jurors, if they wish to, to pose any questions of their own  
15 of this witness. Come back in five minutes, or as long as it  
16 takes for that process to be completed.

17 So we're in recess momentarily. Chief, if you'd hang on  
18 for a few more minutes.

19 **THE WITNESS:** Okay.

20 **THE COURT:** Thank you.

21 (Proceedings were heard out of presence of the jury:)

22 **THE COURT:** And we're in recess.

23 (Recess taken at 11:10 a.m.)

24 (Proceedings resumed at 11:16 a.m.)

25 (Proceedings were heard out of presence of the jury:)



1           **THE COURT:** We're back in session. The jurors will  
2 return in a moment. We do have one question for the chief, if  
3 we could let our jurors back in.

4           (Proceedings were heard in the presence of the jury:)

5           **THE COURT:** All right. Please be seated. We have a  
6 question from our jurors.

7           And you remain under oath to answer this one.

8           **THE WITNESS:** Okay.

9           **THE COURT:** It has two parts, so I'll read you the  
10 entire question and then read it back to make sure you heard  
11 all of it.

12          The question is: Was the PSP ended or continued, and if  
13 it was ended, if you know, what is your best estimate of how  
14 much the extensions cost the City?

15          So I'll read it all again: Was the PSP ended or  
16 continued, and if it was ended, if you know, what is your best  
17 estimate of how much the extensions cost the City?

18          **THE WITNESS:** The Promoted Support Paramedic Program,  
19 the PSP program, was not ended. It was extended. It's still  
20 in place today. With that particular agreement that we agreed  
21 to at that time, the agreement was to reduce the number of  
22 participants within the program, and increase the pay to three  
23 and-a-half percent. Prior to, they were getting 3 percent,  
24 they increased it to three and-a-half, but reduced the number  
25 of individuals. The thought process behind that was not to

1 seek any additional funds that was already allocated through  
2 the program, but just redistribute the funds that were already  
3 budgeted.

4 And then when the contract was opened up again, we did a  
5 full contract negotiations where the Paramedic Program was  
6 again renegotiated, and it was increased from three and-a-half  
7 percent to 4 percent.

8 **THE COURT:** Any follow-up on that question,  
9 Mr. Siegel?

10 **REDIRECT EXAMINATION**

11 **BY MR. SIEGEL:**

12 **Q.** Just to be clear, Chief Reed, it was extended in various  
13 steps; is that right?

14 **A.** So maybe I -- extended wasn't the proper word. It was  
15 continued.

16 **Q.** Okay. I'm not trying to quibble with you about the words.  
17 But in July, the Council approved the June 30 agreement, which  
18 extended it through the end of July; correct?

19 **A.** Right. So it was extended twice, and then it was approved  
20 for three and-a-half once we got to the table to negotiate  
21 salaries.

22 **Q.** Okay. But just to be clear, in July, the June 30  
23 agreement was approved by Council to extend the program through  
24 the end of July; correct?

25 **A.** Yes.

1 Q. And then after that, it was extended up through some date  
2 in September?

3 A. I believe so, yes.

4 Q. And then there was a full contract negotiated to extend it  
5 up to now?

6 A. The contract, the full contract negotiation was not to  
7 extend it, it was really just negotiating the incentive pay  
8 that the individuals received. So there was no -- after the TA  
9 that was signed in September, there was no need to discuss  
10 extending the program, because it was a program that was  
11 established, because it had been a pilot program since 1999.  
12 And so we took it out of the pilot status, made it a, you know,  
13 city-sponsored program. And so when the contract was reopened  
14 I believe the following year, I think in 2014, that all they  
15 negotiated -- not the program as a whole or whether to extend  
16 it, they just negotiated the incentive pay or the pay those  
17 members received that participated in the program.

18 Q. So the new contract that you have described incorporated  
19 the program that had already been negotiated?

20 A. Correct. Correct.

21 MR. SIEGEL: Okay. Thank you.

22 THE COURT: Mr. Lafayette, any further questions on  
23 your side?

24 MR. LAFAYETTE: Just to clarify.

25

**RECROSS-EXAMINATION**

**BY MR. LAFAYETTE:**

**Q.** Exhibit 3F, which I asked you to take a look at before,  
which is the September 5, 2013 Agenda Report?

**A.** Is this --

**Q.** 3F, as in Frank?

**A.** Okay.

**Q.** Is that the agenda report summarizing what the final  
disposition was on this issue in 2013?

**A.** Correct.

**MR. LAFAYETTE:** I'd like to move that into evidence,  
Your Honor.

**MR. SIEGEL:** No objection.

**THE COURT:** One moment. 3F, as in Frank, is  
admitted.

(Trial Exhibit 3F received in evidence)

**THE COURT:** Go ahead.

**BY MR. LAFAYETTE:**

**Q.** And is this the document that relates to the three  
and-a-half percent for the participants?

**A.** Correct.

**Q.** And there's a statement on page 3 that says "sustainable  
opportunities," and it talks about what the sustainable  
opportunities are to the extent that there are any; right?

**A.** Correct.

1 Q. I think what you're saying is you extended the existing  
2 program two times up until September, and then at that point  
3 you completed the negotiations, changed some of the numbers  
4 with regard to how much each person would get?

5 A. Correct.

6 Q. And then that was it?

7 A. Right. Changed how much each person would get, and also  
8 how many individuals were actually in the program.

9 Q. And so was there a net monthly increase to the City over  
10 what had been going on before?

11 A. The idea was to stay within the money that was in the  
12 program already, so I don't have those figures off the top of  
13 my head. When it -- here, where it talks about -- I don't know  
14 if there was an increase in the budget, because of the increase  
15 in participants and the increase where we were able to stay  
16 with what was already allotted for the program.

17 Q. A little more to clarify.

18 A. Okay.

19 Q. Now, this was a component of one already existing MOU; is  
20 that right?

21 A. Correct.

22 Q. And in 2014, you renegotiated the entire MOU?

23 A. Correct.

24 Q. And when you did that, it addressed the issues that are  
25 embraced in this document?

1 A. Correct.

2 MR. LAFAYETTE: Thank you. No further questions.

3 THE WITNESS: And I'm sorry, just one more thing.

4 And so the -- in 2014, this program went from three  
5 and-a-half percent to 4 percent.

6 MR. LAFAYETTE: All right. Thank you.

7 THE COURT: Ms. Reed, you may step down. Thank you  
8 very much for being here today.

9 And if Ms. Preston will call her next witness, please.

10 MR. SIEGEL: Okay. I think we'll call Joe Keffer  
11 through deposition.

12 THE COURT: All right. And how would you like to  
13 present Joe Keffer's testimony?

14 MR. SIEGEL: I'm going to play Joe Keffer.

15 THE COURT: All right. So ladies and gentlemen,  
16 we're now going to have a deposition presented to you. A  
17 deposition is testimony under oath, under penalty of perjury  
18 that is of the same oath given here in court. The rules permit  
19 that deposition testimony may be presented and considered by  
20 you just like any other evidence and testimony in the case.

21 Mr. Siegel is going to be providing the testimony to you.  
22 It's not his own testimony. You have to imagine that it's Joe  
23 Keffer, and so this is an exception to my admonition to ignore  
24 that the words coming out of the mouths of the attorneys is not  
25 evidence. In this occasion it will be evidence, because it's

1 not his words, it's the words of the witness Keffer.

2 **MR. LAFAYETTE:** Your Honor, there were objections  
3 made to the designations.

4 **THE COURT:** All right. So which portions? Whoever  
5 is doing the examination here, which portions of it -- of the  
6 deposition are you planning to present?

7 **MS. MEHTA:** What we submitted to the Court earlier,  
8 and what the --

9 **THE COURT:** Identify it for me.

10 **MS. MEHTA:** The discovery excerpts that we showed --  
11 okay. Page 21, line 22 through 22:2.

12 **MR. SIEGEL:** You started on page 12, didn't you?

13 **MS. MEHTA:** Oh, excuse me.

14 **THE COURT:** And I need a copy of it as well.

15 **MS. MEHTA:** Of the deposition?

16 **THE COURT:** Yes, please.

17 **MR. LAFAYETTE:** If I could, Your Honor, at -- we  
18 filed Appendix A with the Court, a document which contains each  
19 one of the excerpts, along with the objections to the excerpts,  
20 and I would suggest that that might be helpful.

21 **THE COURT:** Thank you.

22 **MS. MEHTA:** Your Honor, this was a defense  
23 deposition, so they should provide it to the judge.

24 **THE COURT:** Just one moment. I've got it, the mini  
25 deposition transcripts here.

1           **MR. LAFAYETTE:** And I would lastly point out, Your  
2 Honor, that the document that was referring to contains the  
3 exact language. It includes the testimony.

4           **THE COURT:** So I have been given three volumes of  
5 deposition transcripts by the defense; is what you're referring  
6 to in one of these volumes?

7           **MR. LAFAYETTE:** Oh, I would -- if I could, Your  
8 Honor, approach. I was actually pointing to this document that  
9 contains his testimony.

10          **THE COURT:** Why don't you answer my question. Is it  
11 in one of these binders.

12          **MR. LAFAYETTE:** Volume 1.

13          **THE COURT:** All right. I have the Keffer transcript  
14 before me, and tell me which parts you're planning to read to  
15 the jury.

16          **MS. MEHTA:** Page 12:1 through 17; page 21,  
17 line 22 through page 22, line 23; page 26:1 through 16;  
18 page 27:5 through 14; page 27:24 through page 28, line 8;  
19 page 28, line 12 through line 24; page 30, line 11 to line 13;  
20 page 30, line 18 through line 24; page 32, line 16 through  
21 line 21; page 34, line 18 through page 36, line 23; page 37,  
22 line 23 through page 38, line 6; page 38 line 13 through  
23 line 25; page 40, line 15 through line 4 on page 41; page 43,  
24 line 22 through page 44, line 5; page 46, line 17 through  
25 page 47, line 3; page 47, line 7 through page 48, line 10;



1 page 54, line 10 through line 17; page 54, line 2 through  
2 line 24; page 59, line 21 through page 60, line 2; page 65,  
3 line 11 through page 66, line 1; page 72, line 21 through  
4 page 74, line 17; page 77, line 23 through page 79 line 15; and  
5 finally, page 80, line 9 through page 81, line 3.

6 **THE COURT:** Thank you. One moment.

7 Mr. Lafayette, the document number you referred to as far  
8 as the Exhibit A --

9 **MR. LAFAYETTE:** Yes.

10 **THE COURT:** -- is what?

11 **MR. LAFAYETTE:** It is docket number 115, 115-1, and  
12 it starts on page 1.

13 **THE COURT:** Thank you. One second.

14 **MR. LAFAYETTE:** I stand corrected, Your Honor. These  
15 are only objections to the passages, otherwise --

16 (Pause in the proceedings.)

17 **THE COURT:** All right. I've considered the  
18 objections within the context of other rulings at trial, and  
19 given the leeway given to both parties for hearsay, the  
20 objections are overruled.

21 You may proceed with the questions and answers.

22 **MS. MEHTA:** Thank you, Your Honor.

23 **JOE KEFFER,**

24 called as a witness for the Plaintiff, having been duly sworn,  
25 was examined and testified through **DEPOSITION TESTIMONY** off the

1 record.

2 **BY MS. MEHTA:**

3 **Q.** I'm sorry. Go ahead, Mr. Keffer, when did you meet  
4 Ms. Preston that you recall?

5 **A.** I worked for SEIU 1021 as a city representative for about  
6 two years. I imagine I met her early on in the process. She  
7 was the Personnel Director or Human Resources Director or  
8 something of that nature, and she was the one that was  
9 responsible for grievances and doing negotiations, and so  
10 forth, so I had some dealings with her. Most of my dealings  
11 were with the people that worked underneath her.

12 **Q.** Did you meet Ms. Preston before she had taken a position  
13 with the City of Oakland?

14 **A.** Not to the best of my recollection. I had not met her  
15 before that time.

16 **Q.** So let's turn to this meeting on August 6th, 2013. I  
17 recognize --

18 **THE COURT:** Hold on, Ms. Mehta. When you jump to a  
19 new section, could you indicate the new page and line number  
20 you're going to just, so that the jury knows it's a new part of  
21 the examination.

22 And for all parties, we're not making a transcription of  
23 this part, because there already is a transcription made.

24 (reporter goes off the record as instructed by the Court)

25 **MR. LAFAYETTE:** Your Honor, on August 11th,

1 plaintiff's counsel served us a list of designations to which  
2 we were supposed to provide counter designations. It appears  
3 to me, as I'm listening to her call out the citations, that  
4 she's referring to citations that were not on the list that  
5 were sent to us mid-August.

6 **THE COURT:** What is your response?

7 **MS. MEHTA:** There may have been some slight changes.

8 **THE COURT:** It's not a good time to hear about slight  
9 changes.

10 All right. I'm limiting any further exam to those that  
11 are disclosed August 11th. So the objection is sustained. But  
12 as to any of them that have been read so far, I find there's  
13 been no prejudice or anything improper. Continue.

14 (reading of deposition continues.)

15 (end of deposition reading.)

16 **THE COURT:** Does the defense have any counter  
17 designations that you would like to have read in at this time?

18 **MR. LAFAYETTE:** We have counter designations, Your  
19 Honor. Given we only have five minutes, I could start, but I  
20 think there are witnesses who would rather come in.

21 **THE COURT:** Are there witnesses available to come in  
22 next?

23 **MS. MEHTA:** Yes. Mr. Sandre Swanson is here.

24 **THE COURT:** All right. Then let's proceed with  
25 witness Swanson. The defense, of course, is not required to

1 have additional designations to cover, but if you wish to, you  
2 may read them in at a later time.

3 **MR. LAFAYETTE:** Thank you, Your Honor.

4 **THE COURT:** Thank you. Witness Keffer, you may step  
5 down.

6 **THE WITNESS:** Thank you.

7 **THE COURT:** All right. And if we could have  
8 Ms. Preston call her next witness, please.

9 **MR. SIEGEL:** Okay. We would call Sandre Swanson.

10 **THE COURT:** Mr. Swanson, come on forward.

11 **THE WITNESS:** Okay, your Honor.

12 **THE COURT:** We've got some steps here. Would it be  
13 easier for you if we got a chair down?

14 **THE WITNESS:** No, I got it, Your Honor.

15 (pause in proceedings.)

16 **THE WITNESS:** Thank you so much. I appreciate it.

17 **THE CLERK:** Could you remain standing for just a  
18 moment?

19 **THE WITNESS:** Oh, yes, absolutely.

20 **THE CLERK:** Please raise your right hand.

21 **SANDRE SWANSON,**

22 called as a witness for the **PLAINTIFF**, having been duly sworn,  
23 testified as follows:

24 **THE WITNESS:** Yes, yes, absolutely.

25 **THE CLERK:** You may be seated. Please speak clearly

1 into the microphone. State your full name and spell your last  
2 name, please.

3 **THE WITNESS:** All right. Let me just get adjusted  
4 here.

5 Sandre Swanson, S-A-N-D-R-E, Swanson, S-W-A-N-S-O-N.

6 **DIRECT EXAMINATION**

7 **BY MR. SIEGEL:**

8 **Q.** Good morning, Mr. Swanson.

9 **A.** Good morning. Good morning. Is this water, by the way?

10 **THE COURT:** It is.

11 **THE WITNESS:** Excuse me if I --

12 **THE COURT:** Yes, go right ahead.

13 **THE WITNESS:** All right. Good morning.

14 **BY MR. SIEGEL:**

15 **Q.** All right. Now, Mr. Swanson, could you tell us in what  
16 city you currently live?

17 **A.** City of Alameda, California.

18 **Q.** And are you currently employed?

19 **A.** I am -- no, I'm not employed right now. I'm retired.

20 **Q.** Mr. Swanson, have you ever served in the California state  
21 legislature?

22 **A.** Yes, from 2006 to 2012.

23 **Q.** And in what branch of the legislature did you sit?

24 **A.** I served in the State Assembly, and I served as Chair of  
25 the Assembly Labor and Employment Committee.

1 Q. And what was the function of that committee?

2 A. To write laws governing personnel matters in the state of  
3 California.

4 Q. And when did your term in the assembly end?

5 A. 2012.

6 Q. And what did you do after that?

7 A. I became a deputy mayor for the City of Oakland in 2012.

8 Q. And after you became Deputy Mayor, did you become  
9 acquainted with Lawanna Preston?

10 A. Yes. One of my assignments was to assist the Mayor and  
11 the City in labor negotiations.

12 Q. And did you participate in such negotiations alongside of  
13 Ms. Preston?

14 A. Absolutely.

15 Q. Did you have an ability in that context to observe her  
16 performance as a labor relations negotiator?

17 A. Absolutely.

18 MR. LAFAYETTE: Relevancy, Your Honor. I think this  
19 was part of the motions in limine.

20 THE COURT: Mr. Siegel, what's your view on that?

21 MR. SIEGEL: My view is that the defense claims as  
22 its defense that they fired Ms. Preston because she did a poor  
23 job, and I believe that someone who worked with her  
24 side-by-side is capable of responding to that allegation.

25 THE COURT: Mr. Lafayette, direct me to the order you

1 think applies.

2 One moment. Hang on, Mr. Swanson.

3 **MR. LAFAYETTE:** If I look at the order, Your Honor, I  
4 think it's on page 2, line 16 through 18.

5 **THE COURT:** Of docket?

6 **MR. LAFAYETTE:** Docket number 118, page 2 of 5.

7 **THE COURT:** One moment.

8 (pause in proceedings.)

9 **THE COURT:** All right. The objection is overruled.  
10 The motion in limine was as to character testimony. This is  
11 different than that. You may ask the question again so the  
12 jury can hear it.

13 **MR. SIEGEL:** Yes, thank you.

14 **Q.** Mr. Swanson, what did you observe with respect to  
15 Ms. Preston's work as a labor relations negotiator?

16 **A.** If I can first outline the relationship between the  
17 Council and these negotiations, the Council would ask its staff  
18 to pursue negotiation in a particular way, and so they would do  
19 that in closed session, and I witnessed Ms. Preston receiving  
20 those instructions and going into negotiations and carrying  
21 those instructions out.

22 **Q.** Okay. And what did you observe, if anything, in terms of  
23 her relationships with the labor organizations at the other  
24 side of the tables?

25 **A.** Well, it was a very professional relationship. She was

1 representing the City, and they understood that. And in any  
2 labor negotiations, you know, it's adversarial, but she was  
3 firm in representing the City's position and very careful with  
4 the limits of authority that the Council was giving her.

5 Q. And you were present during these negotiations yourself?

6 A. Yes.

7 Q. Okay. And by the way, were you ever participating in  
8 negotiations in which Fred Blackwell was also participating?

9 A. I can't remember whether Mr. Blackwell was in the room, to  
10 be honest with you.

11 Q. Now, did you work with Deanna Santana when she was City  
12 Administrator and you were Deputy Mayor?

13 A. Well, yes, we had meetings on a regular basis, you know,  
14 dealing with general city policy. As deputy mayor, I sat next  
15 to the Mayor, and we received briefings on various city  
16 matters.

17 Q. And at any time during your meetings with Ms. Santana, did  
18 she say anything regarding her intent to terminate  
19 Ms. Preston's employment?

20 A. No, she never talked to me about that.

21 Q. And when did you first learn that Ms. Preston had been  
22 terminated?

23 A. It was after -- it was after it happened, and I was very  
24 surprised, actually.

25 Q. What did you observe of Ms. Santana's management style?



1           **MR. LAFAYETTE:** Objection, relevance, Your Honor,  
2 character.

3           **THE COURT:** Sustained. Why don't you rephrase it if  
4 you're getting more precise.

5 **BY MR. SIEGEL:**

6 **Q.** Okay. Did you have occasion to observe how it was that  
7 Deanna Santana handled relations with her subordinate staff?

8           **MR. LAFAYETTE:** Objection, Your Honor, improper  
9 character evidence and not relevant.

10           **THE COURT:** Overruled.

11           **THE WITNESS:** Well, she was very authoritarian, you  
12 know, people understood that, and she -- she supervised with a,  
13 you know, with a hard hand.

14 **BY MR. SIEGEL:**

15 **Q.** Under the City of Oakland while you served as Deputy  
16 Mayor, to whom was the City Administrator responsible?

17 **A.** City Administrator was responsible to the Mayor, and she  
18 had other responsibilities to the Council.

19 **Q.** And was she accountable to the Mayor?

20           **MR. LAFAYETTE:** Objection, calls for a legal  
21 conclusion.

22           **THE COURT:** Overruled.

23           **THE WITNESS:** The charter gives the Mayor authority  
24 to hire and fire the City Administrator.

25

1 **BY MR. SIEGEL:**

2 **Q.** And was there an individual by the name of Ann Campbell  
3 Washington who worked with you and the Mayor while you were  
4 Deputy Mayor?

5 **A.** Yes, she was the Mayor's Chief of Staff.

6 **MR. SIEGEL:** Thank you. Those are all the questions  
7 I have.

8 **THE COURT:** All right. Any cross-examination?

9 **MR. LAFAYETTE:** Just a little bit, Your Honor.

10 **CROSS-EXAMINATION**

11 **BY MR. LAFAYETTE:**

12 **Q.** Good afternoon.

13 **A.** Good afternoon.

14 **Q.** It's been a minute.

15 **A.** Yes.

16 **Q.** The Deputy Mayor position, was that an elected position?

17 **A.** That was an appointed position by the Mayor.

18 **Q.** You were appointed by Mayor Quan?

19 **A.** Yes.

20 **Q.** Okay. And so your direct reporting relationship was to  
21 Mayor Quan, not to the City Administrator?

22 **A.** That's correct.

23 **Q.** And did Mayor Quan share with you everything that she was  
24 doing at all points in time?

25 **A.** Most of the things that she was doing she would share with

1 me. This particular action she did not share with me.

2 Q. Okay. At some point in time were you asked to participate  
3 in negotiations?

4 A. Yes, because I have a long history of involvement in  
5 personnel matters. I served as the Chairman of the Oakland  
6 Civil Service Commission for a number of years, and Chair of  
7 the Alameda County Retirement Board, and in my assembly tenure,  
8 Chair of Labor Employment, so I had this long history of  
9 involvement in labor negotiations matter.

10 Q. Were you asked to do that in the summer of 2013?

11 A. Yes, I believe -- I believe there were several matters.

12 Q. And when you were asked to do that, had the negotiations  
13 been going on already?

14 A. Yes.

15 Q. And as those negotiations had been going on already, had  
16 Ms. Preston been the person for the City at those tables?

17 A. I believe so.

18 Q. And so you were asked to come in to start the -- to  
19 participate in negotiations after they had already commenced  
20 with Ms. Preston at the tables; right?

21 A. Yes. There was a fear the mayor had that the negotiations  
22 were not going well, and she wanted me to use my expertise to  
23 and get involved, and the labor community had respect for my  
24 history and what I could add to the honesty of negotiations.

25 Q. And did you participate in closing some of those tables?

1 Did you participate in closing some of the negotiating tables?

2 A. Oh, yes, uh-huh.

3 Q. Okay. And did you make -- directly make proposals at some  
4 of those tables?

5 A. Well, actually, like I said before, the way it works is  
6 that the Council is the one that it has to approve the  
7 negotiations, and so they -- once a negotiation takes place,  
8 and Ms. Preston and staff would come back to closed session,  
9 and she would offer the union's position, the Council would  
10 discuss it and decide how far they would want to go to meet  
11 that position, and Ms. Preston would go back and negotiate to  
12 that limit, and that's how it was conducted, and because the  
13 Council had to approve the final document.

14 Q. Couple of questions, and then we'll be done; okay?

15 A. No problem.

16 Q. Investigations, were you aware that Ms. Preston had torn  
17 up a witness statement as part of an investigation?

18 A. I don't know anything about that.

19 Q. Okay. No one ever brought that to your attention?

20 A. No.

21 Q. Ms. Santana never brought that to your attention?

22 A. No, they never talked to me about any of Ms. Preston's --  
23 any little issues like that, because I -- frankly, I was  
24 impressed the way she handled negotiations. They were done  
25 successfully.

1 Q. But to the extent that there were criticisms of her  
2 performance, those weren't brought to your attention; right?

3 A. They were not. I wish they were.

4 MR. LAFAYETTE: Okay. Thank you. No further  
5 questions, Your Honor.

6 THE COURT: Mr. Siegel, do you have any follow-up?

7 MR. SIEGEL: Nothing further.

8 THE COURT: All right. I'm going to give the jurors  
9 an opportunity, if they wish to, to pose some questions of  
10 their own.

11 So Mr. Swanson, if you could hang on for just a few more  
12 minutes.

13 THE WITNESS: I'm fine.

14 THE COURT: Very good. We'll take a brief break, and  
15 I'll have my deputy check with you. If you do have questions,  
16 let him know; if you don't, then we'll be taking a lunch break  
17 at that time. So we'll check with you in a few moments.

18 (Proceedings were heard out of presence of the jury:)

19 THE COURT: Back on the record.

20 There are no questions from the jury. So Mr. Swanson,  
21 you're going to be excused. I want to make sure you get down  
22 there successfully. We're going to take a lunch break and  
23 return at 1:05 for the next witness.

24 THE WITNESS: I can go?

25 THE COURT: You're excused. Thank you very much for

1 being here.

2           **THE WITNESS:** Thank you.

3           **THE COURT:** Mr. Siegel, any further clarity about  
4 witnesses coming after Mayor Quan?

5           **MR. SIEGEL:** I believe it will be the plaintiff.

6           **THE COURT:** All right. And that means that the --  
7 that Mr. Ewell is not -- didn't catch a flight, as far as you  
8 know?

9           **MR. SIEGEL:** He's got a flight for tomorrow morning.

10           **THE COURT:** And the other name I didn't put on my  
11 roster of potential people, you've got an expert, who is going  
12 to testify at some point.

13           **MR. SIEGEL:** Tomorrow.

14           **THE COURT:** Tomorrow. All right. Then we'll see you  
15 after lunch. Thank you.

16           (Luncheon recess was taken at 12:15 p.m.)

17 **AFTERNOON SESSION**

**1:05 p.m.**

18 (Proceedings were heard outside the presence of the jury:) quo

19           **THE COURT:** All right. Are we ready to go?

20           **MR. LAFAYETTE:** There's one issue, Your Honor. It's  
21 the issue of the Cheryl Thompson re -- I think what's going to  
22 happen is -- I talked with Mr. Siegel. We're going to have  
23 Mayor Quan testify, and get her out of here.

24           And then we're going to have my read on the Keffer piece.  
25 Okay?

1 And after that --

2 **THE COURT:** Let me pause there.

3 And are you in agreement as to what you're reading from  
4 Keffer? Any objection to --

5 **MR. LAFAYETTE:** I designated to you guys. I don't  
6 think you guys raised objections.

7 **MS. MEHTA:** No objections.

8 **THE COURT:** So you know what you're going do with  
9 that. Okay.

10 **MR. LAFAYETTE:** I know what I'm going to do with  
11 that.

12 And after that, I think there's an issue with the Thompson  
13 read that I think the Court still has to resolve. And then  
14 we'll know what we're going to do with the Thompson read. And  
15 then if that's going to go forward, we'll have some  
16 counterdesignations on that, which -- that's just another  
17 issue.

18 And then I think after that, it's Ms. Preston. Is that  
19 accurate?

20 **MS. MEHTA:** Sounds right.

21 **MR. SIEGEL:** Fair enough.

22 **MR. LAFAYETTE:** I thought it would be nice to let you  
23 know where we were going right now.

24 **THE COURT:** Thompson. Then we'll take a break after  
25 those two parts.

1           **MR. LAFAYETTE:** Thank you, Your Honor.

2           **THE COURT:** Thank you.

3           Let's bring in the jury.

4           (Proceedings were heard in the presence of the jury:)

5           **THE COURT:** All right. Please be seated. Our jurors  
6 have returned. We continue with our case, with plaintiff  
7 calling her next witness.

8           **MR. SIEGEL:** Yes, Your Honor. We call Jean Quan.

9           **THE COURT:** And if someone can --

10          **MR. LAFAYETTE:** Oh.

11          **THE COURT:** -- retrieve Ms. Quan.

12          Good afternoon. Come on forward. We'll swear you in.  
13 Watch your step as you go up the stairs there.

14          **THE WITNESS:** All right. Thank you.

15          **THE CLERK:** Please raise your right hand.

16                               **JEAN QUAN,**

17 called as a witness for the Plaintiff, having been duly sworn,  
18 testified as follows:

19          **THE WITNESS:** I do.

20          **THE CLERK:** Thank you. Please be seated.

21          **THE WITNESS:** Thank you.

22          **THE CLERK:** Please state your full name, and spell  
23 your last name.

24          **THE WITNESS:** Jean Quan. Q-u-a-n.  
25



DIRECT EXAMINATION

BY MR. SIEGEL

Q. Okay. Now, Ms. Quan, you're the former Mayor of Oakland.  
Is that right?

A. It is.

Q. And when did you serve as Mayor?

A. A million years ago, between 2011 and January of 2015 --  
of this year.

Q. Okay. And while you were Mayor, did you appoint  
Howard Jordan as Police Chief?

A. Yes, I did.

Q. And while you were Mayor, did you appoint Deanna Santana  
as City Administrator?

A. Yes, I did.

Q. Okay. And while you were Mayor, did you appoint  
Sandre Swanson as your Deputy Mayor?

A. Yes, I did.

Q. Okay. And you had known Sandre Swanson for some time  
prior to appointing him as Deputy Mayor?

A. Probably for 25 years or so.

Q. Okay. And you had confidence in his expertise when you  
appointed him as Deputy Mayor?

A. His expertise in general? A particular expertise?

Q. Well, I was going to start out in general. You thought he  
would be a good Deputy Mayor to help you run your office as

1 Mayor?

2 **A.** Well, the role of Deputy Mayor is not in the Charter, as  
3 you know, but I thought that he would be a good representative  
4 of the City, and a good liaison of the Mayor's Office to the  
5 community.

6 **Q.** Okay. And did that include the labor community?

7 **A.** Yes.

8 **Q.** And did you agree or believe, let's say, that when  
9 Sandre Swanson began to work with you or for you, that he would  
10 be helpful in terms of collective bargaining and relations with  
11 the unions that represent City employees?

12 **A.** Not for collective bargaining.

13 Clearly, the Mayor's Office is often asked to mediate.  
14 And I think we mediated at least four strikes while I was  
15 Mayor. And that we were liaison for the building trades and  
16 others to make sure that Oaklanders got hired --

17 **Q.** Okay.

18 **A.** -- but not necessarily for negotiations. That's -- I  
19 don't think that's Sandre's strength.

20 I, on the other hand, am a former SEIU organizer.

21 **Q.** Okay. Well, let me ask you this. Isn't it true that  
22 towards the end of 2013, that Deputy Mayor Swanson did assist,  
23 along with Fred Blackwell, in closing out some of the contract  
24 negotiations with the unions?

25 **A.** Yes.

1 Q. Okay. Now, you brought this up, yourself. You -- you,  
2 yourself, have experience in labor relations. Is that right?

3 MR. LAFAYETTE: Your Honor, can I have an objection?  
4 This exceeds the scope of the designations which were filed.

5 MR. SIEGEL: What designations?

6 MR. LAFAYETTE: It exceeds the scope of the  
7 designations filed mid August with this Court.

8 THE COURT: Overruled.

9 MR. SIEGEL: Okay.

10 Q. You have personal experience in labor relations. Is that  
11 right?

12 A. I was honored to be one of SEIU's Asian-American  
13 international organizers.

14 Q. And when did you do that?

15 A. I'll have to look.

16 Q. 1980s, would it be?

17 A. In the '80s, for about seven years. I worked mostly  
18 organizing immigrants, but also running the division for the  
19 health-care workers.

20 Q. Okay. And what did your responsibilities include when you  
21 were running a division for the health-care workers?

22 A. Mostly -- for SEIU, mostly organizing immigrants who were  
23 often afraid; and then negotiating contracts with the  
24 hospitals. And probably the most important thing was  
25 recruiting young Asian-Americans into the union movement, and

1 training them to be shop stewards, and working with SEIU to be  
2 more sensitive to the needs of immigrant workers.

3 **Q.** Okay. You mentioned doing some collective bargaining. Is  
4 that right?

5 **A.** Yes.

6 **Q.** In your experience, is it common in the course of doing  
7 collective bargaining to have what are called "sidebars"?

8 **MR. LAFAYETTE:** Objection, Your Honor. Relevancy.

9 **THE WITNESS:** Depends on the --

10 **THE COURT:** One moment.

11 **MR. LAFAYETTE:** Objection, Your Honor. Relevancy.

12 And it's calling for opinion testimony.

13 **THE COURT:** That is sustained.

14 **BY MR. SIEGEL**

15 **Q.** In your experience doing collective bargaining, did you  
16 engage in sidebar conversations with management?

17 **MR. LAFAYETTE:** Objection. Relevancy and opinion.

18 **THE COURT:** That didn't call for an opinion. It is  
19 overruled.

20 But we're not going to have expert testimony from the  
21 Mayor that was not disclosed before trial.

22 **MR. SIEGEL:** It's not expert testimony. It's just  
23 speaking about her experience.

24 **THE COURT:** We're not going to have expert testimony  
25 from the Mayor. So --

1           **MR. SIEGEL:** Okay.

2           **THE COURT:** -- proceed.

3           **MR. SIEGEL:** Yes.

4   **Q.** Did you engage in sidebars with management when you were  
5 an SEIU negotiator?

6   **A.** That's hard to say. You know, SEIU has huge contracts.  
7 As a young organizer, I'd be way down at that level, so I was  
8 never at the level where I did sidebars.

9   **Q.** Okay. You were aware of other people doing sidebars?

10   **A.** I really wouldn't speculate.

11   **Q.** Sorry?

12   **A.** I wouldn't speculate, because you're asking my personal  
13 experience. I wouldn't speculate.

14   **Q.** Okay. Well, let me ask you this. You knew  
15 LaWanna Preston. Correct?

16   **A.** Yes.

17   **Q.** And there was a time when you knew that Deanna Santana had  
18 some issues regarding Ms. Preston?

19   **A.** Yeah. As Mayor, I don't directly supervise staff, but  
20 City Hall's a small world, and you hear when people are not  
21 getting along. And so not particularly with Deanna, but I  
22 heard other issues with other employees.

23   **Q.** Okay. Isn't it true that you called Ms. Santana and  
24 Ms. Preston into your office at some point in mid 2013 for a  
25 conversation?

1 A. We met regularly on negotiations.

2 Q. You met --

3 A. So the only time I remember that configuration of people  
4 is in our monthly reports on how negotiations were going.

5 Q. So you would meet with Ms. Santana and Ms. Preston  
6 regarding how negotiations were going?

7 A. Yes, and I think one or two other staff people.

8 Q. Okay. And isn't it true that on one occasion you said to  
9 Ms. Santana, "I need you to get along with LaWanna Preston.  
10 She's not going anywhere"?

11 MR. LAFAYETTE: Objection. Leading.

12 THE COURT: Sustained.

13 MR. SIEGEL: This is cross-examination, Your Honor.

14 THE COURT: No. This is your witness. She's not  
15 adverse to you. She's not a party to the case.

16 BY MR. SIEGEL

17 Q. All right. Did you have a conversation with the two of  
18 them about how they were getting along?

19 A. I don't recall that, but it's not unlike my Office to be  
20 mediators; encourage everybody to get along.

21 Q. Okay. And specifically do you recall encouraging the two  
22 of them to get along?

23 A. No, I don't remember that.

24 Q. Do you know who Pat Washington is?

25 A. Excuse me?

1 Q. Do you know who Pat Washington is?

2 A. Pat Washington?

3 Q. Yes.

4 A. No.

5 Q. Do you know who Pat Ford is?

6 A. Yes.

7 Q. And who is Pat Ford?

8 A. Pat Ford is a former International Vice President of SEIU  
9 International. She came up the ranks in Oakland, and is  
10 probably one of my best friends.

11 Q. Okay. And did Pat Ford encourage you to convene a meeting  
12 of Deanna Santana and LaWanna Preston?

13 MR. LAFAYETTE: Objection. Relevancy, Your Honor.

14 THE COURT: Overruled.

15 You can answer.

16 THE WITNESS: Yes, she did.

17 BY MR. SIEGEL

18 Q. Okay. And did you then meet with LaWanna Preston and  
19 Deanna Santana?

20 A. No, I didn't.

21 Q. Did you ever speak with Sandre Swanson about  
22 Deanna Santana's criticisms of LaWanna Preston's performance?

23 A. I might have.

24 Q. Well, do you recall?

25 A. I don't know when, but it -- Sandre and I worked together

1 every day, and it would not be unlikely that I did at some  
2 point.

3 **Q.** Okay. What is your opinion of Sandre Swanson's honesty  
4 and integrity?

5 **MR. LAFAYETTE:** Objection. Relevancy and opinion  
6 testimony.

7 **THE COURT:** Overruled.

8 **THE WITNESS:** Yeah. Sandre is like a brother to me,  
9 but I -- I don't know what that has to do with this case.

10 **BY MR. SIEGEL**

11 **Q.** Well, with all due respect, that's not your call. Please  
12 answer my question.

13 **MR. LAFAYETTE:** Objection, Your Honor.

14 **THE COURT:** No.

15 If you would like to ask the question again, you may; but  
16 you don't get to argue with the witness or to tell her what she  
17 has to do.

18 **BY MR. SIEGEL**

19 **Q.** Please answer my question.

20 **THE COURT:** And ask the question in the singular.

21 **MR. SIEGEL:** What is your opinion --

22 **THE COURT:** Strike the last answer.

23 Go ahead.

24 **BY MR. SIEGEL**

25 **Q.** What is your opinion of Sandre Swanson's character for



1 honesty?

2 **A.** Like I said, I believe that Sandre is one of the most  
3 principled elected officials; not afraid to go against the  
4 tide; and who really cares about people.

5 **Q.** Okay.

6 **A.** And that, unfortunately, is not so dominant in politics  
7 today.

8 **Q.** But what is your opinion about his honesty?

9 **A.** I think that Sandre will always give what he thinks; that  
10 he'll be honest about what he thinks.

11 **Q.** Okay. Now, you're aware that Ms. Preston's employment as  
12 Employee Relations Director of the City of Oakland was  
13 concluded on October 3, 2013?

14 **A.** I couldn't say to the date, but I know that after  
15 negotiations she was let go.

16 **Q.** Okay. And was that termination for cause?

17 **MR. LAFAYETTE:** Objection. Calls for a legal  
18 conclusion as --

19 **THE COURT:** I'll sustain it, and first see if there's  
20 a foundation to establish whether she knows something's for  
21 cause or not.

22 **MR. SIEGEL:** Okay.

23 **Q.** Do you know whether Ms. Preston's termination was for  
24 cause?

25 **A.** She was an at-will employee. And she had finished the job

1 that we had brought her in for.

2 **Q.** So does that mean, to your understanding, that she was not  
3 terminated for cause?

4 **A.** She was not terminated for cause, as far as I knew.

5 **MR. SIEGEL:** Thank you. No further questions.

6 **THE COURT:** Cross-examination.

7 **MR. LAFAYETTE:** Yes, Your Honor.

8 **CROSS-EXAMINATION**

9 **BY MR. LAFAYETTE**

10 **Q.** Good afternoon, ma'am. You were the Mayor. Right?

11 **A.** Good morning. Yes, I was.

12 **Q.** Okay. And as the Mayor, you brought in Deanna Santana, I  
13 think you said. Correct?

14 **A.** Could you get a little bit closer to the microphone? I'm  
15 sorry. I have this cold.

16 **Q.** I have an unnaturally soft voice, which is odd, and I  
17 really need to use the mic. Thank you.

18 So let me just ask you to go to the heart of the matter.

19 Okay? In 2013 did you have some discussions with  
20 Deanna Santana regarding whether or not Ms. Preston should  
21 remain in her position?

22 **A.** Yes, I did.

23 **Q.** And in the discussions that you had with Ms. Santana in  
24 March of 2013 --

25 **MR. SIEGEL:** Objection. Lack of foundation as to

1 date.

2 **MR. LAFAYETTE:** I haven't gotten my question out.

3 **THE COURT:** Overruled.

4 **BY MR. LAFAYETTE**

5 **Q.** With regard to the conversations you had in March of 2013  
6 with Ms. Santana, did she explain to you that she was  
7 interested in making a change in that position?

8 **A.** Your Honor, could I just say something to lay a foundation  
9 to that answer?

10 **THE COURT:** If it's necessary to answer it, yes.

11 **THE WITNESS:** Yes. I just want to make it very clear  
12 that the Mayor of Oakland is not as really a strong Mayor as  
13 San Francisco, and that I actually only hire and fire.

14 Ms. Santana, however -- under our agreement, we would -- I  
15 have basically veto. Not through the Charter, but through my  
16 agreement with Ms. Santana, I had the ability to veto  
17 department-head choices. So the head of Personnel or HR would  
18 be one of those positions.

19 And so the conversation we had was because  
20 Andrea Gourdine, who was our HR person, retired. And  
21 Ms. Preston interim-ly filled that position. The -- the issue  
22 was: Would we do a national search for the head of that  
23 department? And that was my policy in general; that when we  
24 had a department-head position, that we would do a national  
25 search. Right? And so that was the bulk of our conversation

1 in March; that he felt that we should do a national search, and  
2 look for someone who had very broad personnel experience.

3 **BY MR. LAFAYETTE**

4 **Q.** Okay. And at some point after that conversation, was  
5 there a conversation that you had with Ms. Santana about  
6 removing Ms. Preston?

7 **A.** At the time we got into later spring, negotiations were  
8 dragging on much longer than we thought. And Ms. Santana  
9 wanted to just go ahead and remove Ms. Preston, and bring in --  
10 or raise the level of another negotiator.

11 **Q.** Bring in another negotiator? Did she want to -- did she  
12 talk to you about terminating Ms. Preston?

13 **A.** Yeah, she did.

14 **Q.** And was that in the spring of 2013?

15 **A.** That would probably be -- by that time, it would probably  
16 be about April; maybe May.

17 **Q.** Okay. And did the two of you talk about why she wanted to  
18 terminate Ms. Preston?

19 **A.** Not in detail at that time. It's more that it seemed that  
20 negotiations were going much longer than we expected. We had  
21 actually hoped to be winding up, and we had a strike; a one-day  
22 strike. And I thought that was unnecessary; that they didn't  
23 really get our final offer; but I asked Ms. Santana to not rock  
24 the boat, and let negotiations finish.

25 **Q.** You asked her not to terminate at that point in time?

1 A. Yes.

2 Q. And you asked her to wait until the negotiations were  
3 finished?

4 A. Yes.

5 Q. Okay. And because the negotiations weren't wrapping up --

6 A. I'm sorry?

7 Q. Did -- at some point in time, did you bring in -- did you  
8 request others to participate in the negotiations?

9 A. After we had the strike, I was very concerned. And so  
10 both myself and the Deputy Mayor sat in so the employees could  
11 see that we really did care, and that we were hearing both  
12 sides. And so we started sitting in the negotiations during  
13 the last month. And we made the -- the best and final offer,  
14 ourselves. Right? And it was in order to try to gain the  
15 trust of the employees. So Mr. Swanson and I both appeared at  
16 the last -- I don't know -- four or five bargaining sessions.

17 Q. You and Mr. Swanson did?

18 A. Excuse me?

19 Q. You and Mr. Swanson participated in the last four or five  
20 bargaining sessions?

21 A. I probably participated in two of the five, in the middle  
22 of the night, I think. About a week later, Sandre and -- and I  
23 were on the phone, and I think we -- we finalized the numbers  
24 on the final settlement.

25 Q. Okay. Was there a moment -- a point in the negotiations

1 where you and Mr. Swanson actually presented the final demand?

2 **A.** Yes. So about five meetings out, right -- right before  
3 they went out on strike, we presented what I thought was a very  
4 good offer. And it was very similar to what they finally  
5 settled for. And I think they were surprised how good the  
6 offer was, but they were already told to strike, and so we  
7 resumed talking after the strike.

8 **Q.** Prior to submitting that proposal, had you shared it with  
9 Ms. Preston?

10 **A.** The only people who knew about our best and final was our  
11 budget director, Ms. Santana, Mr. Swanson, and myself.

12 **Q.** Was there a reason why the Director of Labor wasn't  
13 included in that circle?

14 **A.** I think that -- that the unions -- both the unions and  
15 City Hall are full of holes. Right? And once people know what  
16 you're willing to offer, then the union -- and I've done it,  
17 myself -- will ask for more than what you're willing to put on.  
18 They use that as the base, and then ask for more.

19 And what I was assigned to do is keep our best and final  
20 really among ourselves so that, you know, they could see it  
21 fresh, and wouldn't have time to ask for twice as much,  
22 basically.

23 **Q.** So you kept your circle tight?

24 **A.** We kept it very tight.

25 **Q.** In order to make sure that information didn't leak and go

1 to the union?

2 **A.** Yes.

3 **Q.** Were you involved in the actual decision to terminate  
4 Ms. Preston?

5 **A.** You know, the -- the -- the -- yes and no, because she  
6 wasn't a department head. And the Mayor -- I only asked for a  
7 permanent department head. I only asked for the right to be  
8 able to veto a candidate once we -- once we were considering  
9 hiring them. I wasn't involved in any terminations.

10 Ms. Santana, as a courtesy, would always confer with me.  
11 We talked every day at 7:00 o'clock in the morning, just to  
12 touch bases. And she would let me know, but the decision to  
13 fire people was generally not mine. If a department head was  
14 to be let go, we would -- we would confer; but the authority to  
15 hire and fire, under the Charter, belongs to the City  
16 Administrator.

17 **Q.** Even though you may not be able to talk -- may remember  
18 what the actual problems were, if any, at some point in time  
19 did Ms. Santana come to you and say that she had  
20 specifically -- that she had reasons as to why she wanted to  
21 let Ms. Preston go?

22 **A.** In about April she raised a series of issues that were  
23 happening within the City, and how it was troublesome. We  
24 didn't necessarily link it with letting Ms. Preston go at that  
25 point, but there were issues that -- that we were trying to

1 avoid, and fires we were trying to put out.

2 Like I said, many people think the Mayor is the boss, but  
3 I actually spent a lot of time just mediating between people,  
4 and trying to get people to move together.

5 Q. Did you suggest to Ms. Santana that she work with  
6 Barbara Parker to facilitate a termination of Ms. Preston?

7 A. Whenever we let someone go or were not going to renew the  
8 contract, Ms. Parker would sit in with us.

9 Q. Did you ever speak to Howard Jordan about Ms. Preston?

10 A. No.

11 MR. LAFAYETTE: No further questions, Your Honor.

12 THE COURT: Mr. Siegel. Under Rule 611, there's now  
13 been a foundation established that this witness is adverse to  
14 you. So I'll grant you to ask leading questions if you wish  
15 to.

16 MR. SIEGEL: Okay. Thank you, Your Honor.

17 BY MR. SIEGEL

18 Q. Let me just clarify a couple of things with you, Ms. Quan.  
19 You said that you and Mr. Swanson sat in during the  
20 negotiations. Is that right?

21 A. Yes.

22 Q. And do you recall when that was?

23 A. Well, I think I was there when we first started, which  
24 would have been months and months beforehand, because, like --  
25 basically say that the City of Oakland employees had given back



1 9 percent during the first 2 years I was Mayor, so we could  
2 avoid layoffs. So I went at the opening negotiations to thank  
3 them for that, and to assure them that we were going to return  
4 that 9 percent salary to them. So that was the starting point.  
5 And so I was there for that first meeting.

6 And then I was there the day before the strike. So  
7 whenever the BART strike was, I was there to make what we  
8 thought was the best offer that we could make. And then I  
9 think I was there right after that for a short while; and then  
10 Sandre stayed.

11 Q. Okay. So what was the month and year when you made that  
12 best and final offer?

13 A. The which offer?

14 Q. The best and final you spoke about.

15 A. So that would be it. I don't know. When was the BART  
16 strike?

17 Q. So you don't recall?

18 A. I don't recall the exact date. I just remember it was the  
19 day before the BART strike.

20 Q. Okay. So was that in 2013?

21 A. Yes.

22 Q. Okay. And who formulated that last best and final  
23 proposal?

24 A. Again, it was a work meeting with the budget director,  
25 Ms. Santana, and myself. And then Sandre came in later.

1 Q. The budget director was who at the time?

2 A. What?

3 Q. The budget director was who at the time?

4 A. We were doing a transition. So it may be way back in the  
5 preparation, it would have been Scott Johnson; but at that  
6 time, I'm guessing it was Donna Hom.

7 Q. Okay. And did you run that last best and final offer by  
8 the City Council before you presented it to the unions?

9 A. We'd asked them for parameters. Right? So we go to  
10 City Council, and we ask them for parameters. And last best  
11 was within those parameters.

12 No, we had not gone back to the City Council. If I had  
13 done that, it would have been on the front page of the  
14 *Chronicle*.

15 Q. Okay. So you didn't? You did not do that?

16 A. No, absolutely not.

17 Q. Okay. And a few moments ago you mentioned that there was  
18 an issue regarding Andrea Gourdine leaving, and Ms. Preston's  
19 position?

20 A. I'm sorry? I don't understand the question.

21 Q. Yeah. I -- I didn't understand what you said about  
22 Andrea Gourdine leaving City employment, and what that had to  
23 do with Ms. Preston's employment.

24 A. When I first became Mayor, I pretty much had to hire or  
25 ascertain whether I was going to keep all of the department

1 heads. In many cases, I decided to get new department heads.  
2 At the time I became Mayor, we really didn't have a strong  
3 Personnel Director. And I was able to get Andrew Gourdine to  
4 come from San Francisco. And she promised to work for me for a  
5 year; and she actually ended up working for two years. So she  
6 finally begged off and said, "I want to retire. And I need to  
7 travel."

8 And it was pretty grueling, if you remember. We had -- I  
9 walked in, and had a 50 million deficit. We had to eliminate  
10 200 positions. Then the Governor eliminated redevelopment. So  
11 it was brutal. We were, like, cutting people; cutting and  
12 merging positions; trying to not lay off people.

13 Finally, she basically said, "Okay, Jean. I promised you  
14 a year. I gave you two. I've got to go." So it was vacant,  
15 and we had to decide what to do.

16 So Ms. Santana and I had probably a couple of months of  
17 discussion as to whether we were going to reorganize it, et  
18 cetera. And then we finally decided we would reorganize it.  
19 We'd write a new job description, and we'd do a national  
20 search.

21 That's -- that was a long answer, but that's the process.

22 **Q.** And was Ms. Preston considered as one of the people you  
23 were talking about, in terms of replacing Ms. Gourdine?

24 **A.** So if I remember correctly, she headed one division  
25 under -- and again, I don't promise to be totally accurate on

1 this, because I didn't do the day-to-day organizing or  
2 supervision of staff, but if I remember correctly -- that she  
3 headed one of the divisions within HR.

4 And when Ms. Gourdine left, the way I saw -- and again,  
5 just my interpretation, because I wasn't looking at the  
6 contracts. And you'd have to ask -- basically she rose to be,  
7 in my viewpoint, the acting head of that department while we  
8 were having a conversation about whether it would stay one  
9 department, whether it would stay two divisions, and what kind  
10 of responsibilities it would have.

11 Q. So you're saying that LaWanna Preston became the acting  
12 head of HR for a while?

13 A. Yeah. That's how I saw it.

14 Q. Okay. And was there a time -- excuse me. At the time of  
15 the termination of her employment, was she a department head,  
16 or not?

17 A. She would have been acting in Andrea's position; but by  
18 the time she was terminated, we'd already started the national  
19 search and was probably interviewing a finalist.

20 Q. So you're saying that time Ms. Preston was terminated, she  
21 was the acting head of HR?

22 A. I don't know what the official title was, but she  
23 basically stepped up. And it happened a lot during that period  
24 of time, because we'd literally lost 400 job positions until  
25 the economy turned around, and then we were slowly adding them

1 back. So we left a lot of positions vacant. A lot of people  
2 were doing two or three jobs, whether they had the title or  
3 not.

4 So to be honest, I don't remember whether she got the  
5 title, didn't get the title, or whether, you know, like -- so  
6 we were "All" -- sort of -- "hands on deck." So we were all  
7 doing multiple things. I was the Mayor, and I was, like,  
8 picking people up from the airport. I mean, it was very tough  
9 during the recession.

10 Q. Okay. Last question. Do you know who it was who replaced  
11 Ms. Preston after she was terminated?

12 A. I don't know who immediately.

13 But I got to interview Neil -- and I forgot his last  
14 name -- who was the person we chose of the three finalists  
15 after a national search for that position.

16 Q. And which position is that?

17 A. Well, of the new combined HR. Right?

18 Q. Neil?

19 A. At one time -- I don't know. I'm looking at Ms. Santana  
20 because at one time, it had been divided in two. And then it  
21 was merged together. As we laid off people, people were doing  
22 everything. We weren't doing a lot of hiring during the  
23 recession, so we let a lot of positions be vacant.

24 Q. Okay. And what's Neil's last name?

25 A. Excuse me?

1 Q. Neil's last name?

2 A. I'm not very good. I think it's a Nepalese name or an  
3 Indian name.

4 Q. And do you know someone by the name of Katano Kasaine?

5 A. Yes.

6 Q. Do you know whether she was placed as the head of Employee  
7 Relations when Ms. Preston was fired?

8 A. Katano probably is one of those people who did five  
9 different positions; probably was even acting Assistant City  
10 Manager at one point. She did everything from finance, et  
11 cetera, because we had, again, a lot of empty positions because  
12 of the layoffs, and how long it took to hire top-notch people  
13 for departments. So I know that she had personal functions  
14 under her, as she went in to the -- to fill tentatively part of  
15 Scott Johnson's position. And Scott Johnson was the City  
16 Manager in charge of finances.

17 MR. SIEGEL: Okay. Thank you. Those are all of the  
18 questions I have.

19 THE COURT: All right. I'm going to defer to you for  
20 a moment to give the jury a chance. And I'll give you a chance  
21 after their questions.

22 So, Ms. Quan, we're going to take a break here, and allow  
23 the jurors to write out any questions of their own, if they  
24 wish to. So we'll take a five-minute break, or as long as  
25 necessary for the jurors to write any questions they wish to.

1 And I'll return with any further examination of the witness.

2 **THE CLERK:** All rise.

3 (Proceedings were heard outside the presence of the jury:)

4 **THE COURT:** Mayor, you may step down if you wish.

5 Counsel, while we're at the break, can you tell me more  
6 about the Thompson deposition; so what the issues are?

7 **MR. LAFAYETTE:** I'll frame it at the top, and come  
8 back.

9 **THE COURT:** Very good.

10 **MR. LAFAYETTE:** Thompson was disclosed, as you'll  
11 recall, as a person who'll testify about emotional distress.  
12 She was one of the two. And so when we came here, your Order  
13 asked us to identify excerpts that we wanted, so that counters  
14 could be done. So that was done approximately August 11. And  
15 she wasn't on the list.

16 And it must have been about five to -- about a week  
17 before, maybe four days before the trial. I can't remember the  
18 exact date, and I don't want to get it completely wrong. We  
19 were notified by plaintiffs Council that Ms. Preston -- that  
20 Ms. Thompson was going to be away, and wouldn't be able to  
21 testify. And they wanted to use excerpts from her deposition.

22 And I had spoken to Ms. Thompson at about the same time,  
23 and learned that this had been a trip that she's planned for  
24 quite some time. And so that's the issue. The issue is the  
25 timeliness of providing notice to us with regard to the

1 excerpts. And that's it.

2           **THE COURT:** And what are the pages? Are there  
3 particular pages that you want to read? Have they been shared  
4 with the Defense?

5           **MS. MEHTA:** Yes.

6           **THE COURT:** And are they set forth in the document I  
7 have seen, then?

8           **MS. MEHTA:** No, Your Honor.

9           **THE COURT:** Do I have it in writing somewhere, so I  
10 can follow along when we get to that stage?

11           **MS. MEHTA:** I don't. There are very few.

12           **THE COURT:** How many? How many different excerpts,  
13 roughly?

14           **MS. MEHTA:** Well, one, two, three, four, five, six,  
15 seven, eight, nine, and -- there's eleven.

16           **THE COURT:** What is your proffer as to how long it  
17 will take for us to read the 11 excerpts to the jury?

18           **MS. MEHTA:** Less than ten minutes.

19           **THE COURT:** All right. The objection is overruled  
20 for a few reasons.

21           One, there was disclosure about the witness earlier, so  
22 it's -- and we've had prior disagreements and resolution of  
23 those disagreements as to whether Thompson's testimony will be  
24 allowed, at all -- or other witnesses on this point. And since  
25 I've precluded other witnesses from testifying on the same



1 issue, and because I don't think there would be prejudice to  
2 the Defense, I'll permit those 11 excerpts to be read.

3 **MR. LAFAYETTE:** There were some specific  
4 objections --

5 **THE COURT:** Yes.

6 **MR. LAFAYETTE:** -- that we also had to the excerpts.

7 **THE COURT:** Let's deal with those. What are the  
8 particular objections?

9 **MR. LAFAYETTE:** I could -- do you have a copy of  
10 the --

11 (Whereupon a document was tendered to the Court.)

12 **THE COURT:** And have those been filed or --

13 **MR. LAFAYETTE:** No. They --

14 **THE COURT:** I'll look at them now.

15 **MR. LAFAYETTE:** No, they were --

16 **THE COURT:** I understand. Just a point of  
17 clarification.

18 All right. Has this document been shared with plaintiff's  
19 counsel?

20 **MS. MEHTA:** No.

21 **THE COURT:** All right. You need to give it to them  
22 at the same time you give it to me.

23 **MR. LAFAYETTE:** (Indicating.)

24 **MS. MEHTA:** Thank you.

25 **THE COURT:** Does it set forth the designations that

1 have just been identified in court, as far as you know,  
2 Mr. Lafayette?

3 **MR. LAFAYETTE:** As far as I know, from what I  
4 understand, this contains the excerpts; that they've identified  
5 our objections. And I think it includes our  
6 counterdesignations in it, as well.

7 **THE COURT:** All right. Thank you.

8 They're looking for -- I'll be silent for a minute. Let's  
9 check with our jurors to see if they have any questions. See  
10 if Mayor Quan has any further need to testify.  
11 (Pause in proceedings.)

12 **THE CLERK:** Your Honor, they have questions, but they  
13 need a few more minutes.

14 **THE COURT:** Very good. All right.

15 Ms. Mehta, if you're the one addressing the objections  
16 focusing on excerpts seven, eight, and nine, which are  
17 Ms. Thompson testifying as to things told her by Ms. Preston,  
18 why aren't those hearsay statements? The objection -- one of  
19 the objections is hearsay. Why are those statements not  
20 excludable as hearsay?

21 **MR. SIEGEL:** (Discussion off the record.)

22 **MS. MEHTA:** Right. They're not offered for the  
23 truth. They're offered as evidence of her state of mind.

24 And also I was attempting to provide some background as to  
25 how it is that Ms. Thompson called Ms. Preston.

1           **THE COURT:** All right. Well, this is pretty much the  
2 point of the whole thing. It's not background. It's the  
3 testimony as to what she said.

4           All right. And, Mr. Lafayette, why doesn't the  
5 state-of-mind exception apply?

6           **MR. LAFAYETTE:** This is offered for the truth of the  
7 matter asserted. There's no way of getting around that. The  
8 state of mind of what? Ms. Thompson? Whose state of mind are  
9 we talking about? This is just straight hearsay.

10           **THE COURT:** Well, she's asserting that it's the state  
11 of mind of Ms. Preston that's being asked about; not the truth.

12           **MR. LAFAYETTE:** Well, but that would be --  
13 Ms. Preston could say that in court. To have someone else say  
14 it isn't an example of that person's state of mind. This is  
15 just hearsay. And if that's the case, then anyone could always  
16 pick up the phone and call someone and say something, and have  
17 that become admissible statement in court.

18           **MR. SIEGEL:** State of mind.

19           **THE COURT:** Anything further, Ms. Mehta?

20           **MS. MEHTA:** You know, I don't actually think it's  
21 that important. Lines 20 -- page 13, line 22 through 25. And  
22 that's the hearsay statement.

23           So if I can keep page 13, lines 10 through 21, you know,  
24 or just that Ms. Thompson initiated a phone call to her.

25           **MR. LAFAYETTE:** But then it's not relevant.

1           **THE COURT:** I'm going to think about it for a few  
2 more minutes while we conclude with the Mayor and the Keffer  
3 designations. So I'll have a ruling for you after Keffer.

4           And, Mr. Lafayette, if you can, make sure that this  
5 document gets filed.

6           **MR. LAFAYETTE:** Yes. We will, Your Honor.

7           **THE COURT:** Thank you.

8 (Pause in proceedings.)

9           **THE COURT:** All right. Let's go back on the record.  
10 Return our jurors.

11 (Proceedings were heard in the presence of the jury:)

12           **THE COURT:** All right. Our jurors have returned.  
13 Please be seated, everyone.

14           Mayor, we have two questions for you from the jury. You  
15 remain under oath. You should treat these just like any other  
16 questions, and answer them to the best of your ability. And  
17 I'll give the parties an opportunity to ask any follow-up  
18 questions, if they wish to. I'm sure that would be what they'd  
19 like to do.

20           So the first question is: Did Ms. Preston know that her  
21 position as Director of Employment Relations was temporary, and  
22 that there was a nationwide search going on to possibly replace  
23 her?

24           I'll ask it again, just to make sure you got it.

25           Did Ms. Preston know that her position as Director of

1 Employee Relations was temporary, and that there was a  
2 nationwide search going on to possibly replace her?

3 **THE WITNESS:** You know, I really don't know.

4 I do know that she knew that she had come in to do  
5 negotiations; that is, that that was an at-will and temporary  
6 position that we put in, because we had all of the union  
7 contracts up.

8 Under our contract with the union, if someone stays with  
9 us as a provisional for more than a year, we're actually  
10 supposed to either -- have her apply for it through the regular  
11 civil-service position. And we're not allowed to, like, just  
12 take people off the street, because we have these civil-service  
13 provisions. So she was brought in at a much lower level. I  
14 would think that she would have known, because we did put out  
15 a -- through Personnel -- a description for that position. And  
16 you have to do that as part of a national search.

17 **THE COURT:** Next question. Is it your belief that  
18 Ms. Preston was let go because she completed the job she was  
19 hired to do, or that she was fired?

20 **THE WITNESS:** An at-will person doesn't get fired.  
21 They're just basically -- it's at will. You know, you don't  
22 have to do anything for cause.

23 You know, Ms. Preston and I have known each other for a  
24 long time. And, you know, I think she probably does a good job  
25 at what she does.

1           Whether or not she had the skills to be the Director of  
2 what was going to be a more unified HR -- not just Employee  
3 Relations, but all of Personnel -- was another question, which  
4 is why I agreed with Ms. Santana that she should do a national  
5 search. She certainly could have applied for that, but I think  
6 that the persons that eventually got into the finalists' pool  
7 had much broader experience than she did. And it's one of the  
8 things I tried to do, really. It got me politically in trouble  
9 all of the time. I really tried to do national searches, and  
10 let both inside and outside people apply, so that we could get  
11 the best people as we reformed the Oakland City Government.

12           **THE COURT:** Thank you. That answers the jury's  
13 questions.

14           Mr. Siegel, do you have any further questions?

15           **MR. SIEGEL:** None, Your Honor.

16           **THE COURT:** Mr. Lafayette, do you have any further  
17 questions?

18           **MR. LAFAYETTE:** No, Your Honor.

19           **THE COURT:** All right. Mayor, you may step down.  
20 Thank you for being here.

21           **THE WITNESS:** Thank you.

22 (Witness excused.)

23           **THE COURT:** All right. And should we have the  
24 counterdesignations as to Witness Keffer now?

25           **MR. LAFAYETTE:** Yes, Your Honor.

1           **THE COURT:** So, ladies and gentlemen, earlier today  
2 before lunch we had the deposition transcript read as to  
3 Witness Joe Keffer. And I gave the Defense an opportunity to  
4 wait a little bit longer to give their designations. At this  
5 time, they're going to read their questions and answers from  
6 that same Keffer deposition. You should treat it the same way.  
7 This is testimony under oath that was given before trial. You  
8 should consider it just as any other testimony you hear during  
9 trial.

10           **MR. LAFAYETTE:** I will read, and Ms. Davidson will  
11 answer.

12           **THE COURT:** Very well. Ms. Davidson, why don't you  
13 come up and play the role of Witness Keffer? And, as before,  
14 if you'd just identify where you're starting in your reading,  
15 that will assist us to follow along.

16           **MR. LAFAYETTE:** At page 26, lines 11 through 16.

17                           **JOE KEFFER,**  
18 called as a witness for the Plaintiff, having been duly sworn,  
19 was examined and testified through **DEPOSITION TESTIMONY** off the  
20 record.

21 (Reporter goes off the record as instructed by the Court)

22 (Reading of deposition.)

23           **MR. LAFAYETTE:** Your Honor, these are the trial  
24 exhibits. These are the deposition exhibits, and they relate  
25 to trial exhibits. So if you didn't mind, I was going to

1 insert the trial exhibit number --

2           **THE COURT:** Are they in evidence?

3           **MR. LAFAYETTE:** They are. They are in the witness --  
4 Exhibit List. I can't tell you actually in evidence right now.

5           **THE COURT:** Well, that's what I need to know the  
6 answer to if you're hoping to tell them to the jury.

7           **MR. LAFAYETTE:** No, 5 is not.

8           **THE COURT:** All right, then. And which Trial Exhibit  
9 is it?

10           **MR. LAFAYETTE:** Which one?

11           **MR. SU:** 3Z.

12           **MR. LAFAYETTE:** 3D?

13           **MR. SU:** Zebra. Z.

14           **MR. LAFAYETTE:** 3Z, as in "zebra."

15           **THE COURT:** One moment.

16           Are you going to seek to have 3Z admitted? 3Z is  
17 stipulated; is in evidence.

18           **MR. LAFAYETTE:** It is, Your Honor. Yes, Your Honor.

19           **THE COURT:** So, yes, you may refer to 3Z and ask.  
20 Continue as you were.

21           **MR. LAFAYETTE:** Thank you, Your Honor.

22 (Reading of deposition continues.)

23           **MR. LAFAYETTE:** I'll omit the colloquy, Your Honor.

24           **THE COURT:** Yes.

25           **MR. LAFAYETTE:** Same as 3X, your Honor.



1           **THE COURT:** Okay. That is not in evidence, so --

2           **MR. LAFAYETTE:** Okay. I won't refer to it.

3 (Reading of deposition continues.)

4           **MR. SU:** 4L.

5           **MR. LAFAYETTE:** 4L, your Honor. I know that's not  
6 in.

7 (Reading of deposition continues.)

8           **MR. LAFAYETTE:** Omit the colloquy.

9 (Reading of deposition continues.)

10           **MR. LAFAYETTE:** Pick up at page 60, line 3 through  
11 22; and then 61, line 10, through 62, 6.

12 (Reading of deposition continues.)

13           **MR. LAFAYETTE:** Not a corresponding trial exhibit,  
14 Your Honor.

15 (Reading of deposition continues.)

16           **MR. LAFAYETTE:** Page 63, lines 5 through 24; and  
17 thereafter page 66, 10, through 67, 3. Then 67, 22, through  
18 68, 20, and then 70, 15, through 71, 7.

19 (Reading of deposition continues.)

20           **MR. SU:** 3H.

21           **MR. LAFAYETTE:** 3H?

22 (Reading of deposition continues.)

23           **MR. LAFAYETTE:** Your Honor, at this point I'd like to  
24 move Exhibit 3H into evidence.

25           **THE COURT:** Any objection?

1           **MR. SIEGEL:** No.

2           **THE COURT:** 3H. is admitted. Proceed.

3           **MR. LAFAYETTE:** Thank you, Your Honor.

4 (Trial Exhibit 3H received in evidence.)

5 (Document displayed.)

6 (Reading of deposition continues.)

7           **MR. LAFAYETTE:** Not a trial exhibit, Your Honor.

8 (Reading of deposition continues.)

9           **MR. LAFAYETTE:** Not a trial exhibit.

10 (Reading of deposition continues.)

11           **MR. LAFAYETTE:** Page 80, lines 22, through 81, line  
12 3.

13 (End of deposition reading.)

14           **MR. LAFAYETTE:** That's it, Your Honor.

15           **THE COURT:** Thank you. The witness may step down.

16           And as to Witness Keffer, are there any -- having had the  
17 counterdesignations read on the record, are there any further  
18 excerpts for finality and completeness that plaintiff thinks is  
19 necessary?

20           **MR. SIEGEL:** No, sir.

21           **THE COURT:** All right. At this time, ladies and  
22 gentlemen, we're going to take a short break. There's no  
23 opportunity for you to ask questions of this witness, because  
24 this is witness is not here for you to ask questions to. So  
25 for this witness and any other depositions, you won't get a

1 chance to ask the questions. Let's take a make it an  
2 eight-minute break. Come back at 2:25. I've got a little bit  
3 of legal work to talk about with the lawyers, and we'll have  
4 our next witness.

5 **THE CLERK:** All rise.  
6 (Proceedings were heard outside the presence of the jury:)

7 **THE COURT:** All right. Our jurors are back in their  
8 room, not present.

9 And I want to rule on the objections to the proposed  
10 designations of Witness Cheryl Thompson. This was raised at  
11 the last break. And there's a document that's been submitted  
12 to the Court, but not yet filed -- it will be filed -- which is  
13 the defendants' objections. The principal objection is  
14 hearsay. And under Rule 803, the asserted exception is 803(8)  
15 [sic], which is the existing mental, emotional, or physical  
16 condition of the declarant. The declarant here is  
17 Ms. Thompson, but the proffered testimony is the testimony of  
18 Ms. Preston, so I don't think that exception applies. My  
19 ruling is that I'm excluding the testimony as hearsay.

20 The remaining testimony beyond the statements of  
21 Ms. Preston are irrelevant, because they only set the stage for  
22 the phone call, and establish that there was a phone call; but  
23 if there's not going to be testimony about the phone call, then  
24 there's no relevant testimony of Ms. Thompson.

25 So the objections are granted, and the deposition of

1 Thompson is excluded.

2 So after the break we need plaintiff's next witness.

3 Who'll that be?

4 **MR. SIEGEL:** The plaintiff.

5 **THE COURT:** All right. So we'll be back in six  
6 minutes for Ms. Preston's testimony. Thank you.

7 (Recess taken from 2:19 p.m. until 2:26 p.m.)

8 (Proceedings were heard out of presence of the jury:)

9 **THE COURT:** Back on the record. Let's bring our  
10 jurors in.

11 (Proceedings were heard in the presence of the jury:)

12 **THE COURT:** All right. Our jurors have returned.

13 We're on the homestretch. Plaintiff will call her next  
14 witness, please.

15 **MR. SIEGEL:** Plaintiff calls the plaintiff.

16 Ms. Preston, please step forward.

17 **THE COURT:** You know the drill now.

18 **THE WITNESS:** I think so.

19 **THE CLERK:** Please raise your right hand.

20 **LAWANNA PRESTON,**

21 called as a witness for the **PLAINTIFF**, having been duly sworn,  
22 testified as follows:

23 **THE WITNESS:** I do.

24 Thank you. Please be seated.

25 **THE CLERK:** Please state your full name and spell

1 your last name.

2           **THE WITNESS:** Daryelle Lawanna Preston,  
3 P-R-E-S-T-O-N.

4           **MR. SIEGEL:** Ms. Preston, maybe you could pull the  
5 microphone just a couple inches closer if you don't mind, if  
6 you could do that, nice and loud.

7           **THE WITNESS:** Okay.

8                           **DIRECT EXAMINATION**

9 **BY MR. SIEGEL:**

10 **Q.** Okay. Where do you live?

11 **A.** I live in Pinole, California.

12 **Q.** And with whom do you live?

13 **A.** Presently I live by myself. My youngest son just went off  
14 to college.

15 **Q.** Okay. And how old are you?

16 **A.** I'm 57.

17 **Q.** Are you currently married?

18 **A.** No.

19 **Q.** And you mentioned your younger son. How many children do  
20 you have?

21 **A.** Two.

22 **Q.** And what are their names and ages?

23 **A.** Jacob Tyler Moore, he just turned 18, and Gary Eugene  
24 Lewis, who is 28.

25 **Q.** And where were you born?

1 A. Martinez, California.

2 Q. Do you have any siblings?

3 A. Yes, two, a sister and a brother.

4 Q. And did you grow up in Martinez?

5 A. No, I grew up in Richmond, California and Pinole,  
6 California.

7 Q. What sort of work did your parents do?

8 A. My father worked at Mare Island Shipyard in Vallejo. He  
9 rose to be one of the first African-American superintendents at  
10 Mare Island Shipyard in Vallejo, and my mother was a nursing  
11 assistant for Kaiser for 35 years.

12 Q. Okay. Have you lived in Contra Costa County for your  
13 entire life?

14 A. Yes.

15 Q. And where did you go to high school?

16 A. Pinole Valley High.

17 Q. Did you attend college?

18 A. One year at San Jose State.

19 Q. And did you go to work after San Jose State?

20 A. Yes.

21 Q. Where is that?

22 A. I worked at a number of clothing stores, one is Goldman's,  
23 The Little Daisy, different retail outlets for a few years.

24 Q. Did you go to work for the City of Berkeley?

25 A. Yes, I did.

1 Q. And what was your job when you first went to work for the  
2 City of Berkeley?

3 A. I was initially hired as a parking enforcement  
4 representative.

5 Q. And what does a parking enforcement representative do?

6 A. I think most people in the public call them meter maids.

7 Q. So you gave people parking tickets?

8 A. Yes.

9 Q. And did you get a promotion after that?

10 A. Yes, I did.

11 Q. And what was your promotion to?

12 A. I was promoted to the supervising parking enforcement  
13 representative for the City of Berkeley.

14 Q. And how long did you work for the City of Berkeley?

15 A. Oh, five, six years, maybe a little longer, somewhere  
16 around there. It was quite a while ago.

17 Q. And where did you go to work after the City of Berkeley?

18 A. Service Employees International Union Local 790.

19 Q. That's an SEIU local?

20 A. Yes.

21 Q. And what sort of work did you do for them?

22 A. I was -- initially did internship for one year for SEIU  
23 790, and then after the internship, I was hired permanently as  
24 a business field rep, representative.

25 Q. And what does a field representative do?

1 A. A field representative is a staff person for the union who  
2 organizes work sites, you represent employees in personnel  
3 actions with their employers, you engage in political activity,  
4 and you engage in collective bargaining process and meet and  
5 confers.

6 Q. Is that where you learned how to do that kind of  
7 collective bargaining work?

8 A. Yes.

9 Q. And after you worked as a field representative for a  
10 while, did you receive a promotion from SEIU?

11 A. Yes.

12 Q. To what position?

13 A. I was promoted to a senior business representative, and I  
14 held that position for a few years, and then I was promoted to  
15 the San Francisco Director for Service Employees International  
16 Union.

17 Q. And as the San Francisco Director for the Union, what was  
18 your job?

19 A. I supervised a staff in the City and County of San  
20 Francisco who was responsible for representing the employees in  
21 San Francisco in day-to-day matters, filing grievances. I also  
22 was responsible for the political operation, and the collective  
23 bargaining, conducting meet and confers, and political actions  
24 of the union in the City and County.

25 Q. Approximately how many people did you supervise in that



1 position?

2 **A.** Max, I believe I had approximately ten union  
3 representatives and approximately three administrative staff  
4 employees. At one point I was also the political director, and  
5 I supervised the political staff as well.

6 **Q.** And what employers did the union that you worked for  
7 represent, what employees?

8 **A.** The employees, the employees in San Francisco SEIU  
9 represented approximately 11,000 City and County workers, and  
10 SEIU also had approximately between 15 and 20 nonprofit  
11 organizations in the City and County that they represented, and  
12 the San Francisco Unified School District, and the San  
13 Francisco Community College.

14 **Q.** And at that time did the union that you supervised  
15 represent employees at the City of Oakland?

16 **A.** No. Well, I'm sorry. The union itself represented  
17 employees in the City of Oakland, yes.

18 **Q.** But did you have responsibility for Oakland employees?

19 **A.** No.

20 **Q.** And during the time that you worked for SEIU, did you work  
21 with Joe Keffer?

22 **A.** No.

23 **Q.** Did you work with Dwight McElroy?

24 **A.** No.

25 **Q.** How long in total did you work for the SEIU?

1 A. Approximately 17 years.

2 Q. And then what did you do?

3 A. I took a position in the City of Oakland.

4 Q. And what position was that?

5 A. I was hired as the Labor Relations Manager.

6 Q. And when were you hired?

7 A. I believe it was July 2007.

8 Q. And were you hired into a temporary position?

9 A. No, I was not.

10 Q. Was it a full-time position?

11 A. Yes, it was.

12 Q. And what was your job?

13 A. I was, as the Labor Relations Manager, I reported to the  
14 personnel director, and I was responsible for supervising the  
15 unit of employee relations.

16 Q. Why did you make the change from the labor side to the  
17 management side?

18 A. After working in organized labor for a very long period of  
19 time, I decided that I needed a change, and I -- the skills  
20 that I had gathered over the long period of time that I worked  
21 for the union could be applied to the management side of the  
22 table. So I was really good, and I enjoyed doing labor  
23 relations. It's something I feel I'm very good at, and I have  
24 done for a long time, and I decided that because the rules  
25 governing public sector labor relations are the same, I decided

1 I was able to perform those same type of functions on the  
2 management side of the table.

3 **Q.** Okay. Who was it who hired you to work for the City of  
4 Oakland?

5 **A.** City Administrator Deborah Edgerly.

6 **Q.** And at the time she hired you, did Ms. Edgerly give you  
7 any direction about how to do your job?

8 **MR. LAFAYETTE:** Objection, hearsay.

9 **THE COURT:** Overruled.

10 **THE WITNESS:** Yes.

11 **BY MR. SIEGEL:**

12 **Q.** And what did she have to say?

13 **A.** Ms. Edgerly explained to me that the City of Oakland had a  
14 lot of severe employee problems. There were problems with  
15 employees performance that she felt was widespread. There was  
16 a lack of management enforcing a lot of the policies, personnel  
17 policies. She stated that there were employees in the  
18 corporation yard that she had heard were drinking on city  
19 property during business hours. There were employees, she  
20 understood, that had been doing things like smoking weed while  
21 driving city vehicles on city time. There was an incident, she  
22 explained to me, of a recreation and parks director who hired  
23 an employee once to supervise a children's program without  
24 doing a background check --

25 **MR. LAFAYETTE:** Objection, Your Honor.

1           **THE COURT:** Just one second. Sustained. Let's get  
2 to a more particular question.

3           **THE WITNESS:** Okay.

4 **BY MR. SIEGEL:**

5 **Q.** Okay. So she advised you that there were lots of issues,  
6 and that she wanted you to clean up those problems?

7 **A.** Yes, she did.

8 **Q.** And did you go to work to try to clean up those problems?

9 **A.** Yes, I did.

10 **Q.** And were you successful in that?

11 **A.** Yes. Under Ms. Edgerly's administration, yes, I was.

12 **Q.** And do you know whether doing the work that you were asked  
13 to do made you popular with the unions at the City of Oakland?

14           **MR. LAFAYETTE:** Objection, calls for speculation on  
15 her part, and lacking in foundation.

16           **THE COURT:** Sustained.

17 **BY MR. SIEGEL:**

18 **Q.** Did representatives of the unions representing City of  
19 Oakland employees make clear to you how they felt about your  
20 activities?

21           **MR. LAFAYETTE:** Objection, leading, and constitutes  
22 hearsay.

23           **THE COURT:** Both sustained.

24 **BY MR. SIEGEL:**

25 **Q.** Were you aware that union representatives made public

1 complaints about your work?

2 **A.** Yeah.

3 **MR. LAFAYETTE:** Objection, relevancy, hearsay.

4 **THE COURT:** Hearsay objection is sustained.

5 **BY MR. SIEGEL:**

6 **Q.** What was the position of the person who was your direct  
7 supervisor when you were working in the position that you've  
8 described as Labor Relations Rep?

9 **A.** When I was hired, I reported to the personnel director  
10 Marcia Meyers.

11 **Q.** And again, I'm not so much interested in the names as the  
12 job title of the person to whom you reported.

13 **A.** The personnel director.

14 **Q.** Okay. And was the personnel director -- let me do this  
15 another way.

16 Do you recall when Mayor Jean Quan took office?

17 **A.** Yes.

18 **Q.** And when was that?

19 **A.** I believe it was in 2011.

20 **Q.** January?

21 **A.** Yes.

22 **Q.** And who was the personnel director at the time that Mayor  
23 Quan took office?

24 **A.** I believe it was a gentleman by the name of Wendell Pryor.  
25 Andrea Gourdine was the personnel director, I believe. There

1 was a transition -- there were many personnel directors. After  
2 Marcia Meyers was Wendell Pryor, and then there was Andrea  
3 Gourdine. I believe Andrea Gourdine was the Mayor -- Andrea  
4 Gourdine was the personnel director when Ms. Quan was sworn in.

5 **Q.** Let me ask you this. Was Andrea Gourdine the personnel  
6 director before Ms. Quan became mayor?

7 **A.** I believe so.

8 **Q.** Okay. Let's jump ahead to 2012. Were you still working  
9 for the City of Oakland?

10 **A.** Yes.

11 **Q.** Okay. And prior to 2012, that is during 2011, was Andrea  
12 Gourdine the personnel director?

13 **A.** Yes.

14 **Q.** And do you recall becoming involved in a issue that arose  
15 during 2011 concerning the employment of Assistant City  
16 Administrators Scott Johnson and Fred Blackwell?

17 **MR. LAFAYETTE:** Objection, relevancy.

18 **THE COURT:** What is the relevancy?

19 **MR. SIEGEL:** This relates to her subsequent promotion  
20 and her work with Director Gourdine.

21 **THE COURT:** All right. For that foundational  
22 purpose, the objection is overruled. You may proceed with the  
23 questioning.

24 **MR. SIEGEL:** Thank you.

25 **THE WITNESS:** Sorry. Could you repeat the question?

1 **BY MR. SIEGEL:**

2 **Q.** All right. Let me go back.

3 At some point after Ms. Quan became mayor, did Deanna  
4 Santana become the City Administrator?

5 **A.** Yes.

6 **Q.** And do you recall when that was?

7 **A.** I believe she was hired in August of 2011.

8 **Q.** Okay. And after she was hired, do you recall whether she  
9 undertook to hire her assistants?

10 **A.** Yes.

11 **Q.** And did a problem arise in connection with the hiring of  
12 Ms. Santana's assistants?

13 **MR. LAFAYETTE:** Objection, relevancy.

14 **THE COURT:** Overruled.

15 **THE WITNESS:** Yes.

16 **BY MR. SIEGEL:**

17 **Q.** What was the problem?

18 **MR. LAFAYETTE:** Relevancy again, Your Honor.

19 **THE COURT:** Overruled. You may answer.

20 **THE WITNESS:** Ms. Santana was provided inaccurate  
21 information about her level of authority to offer economic  
22 enhancements to her two Assistant City Administrators by the  
23 personnel department.

24 **MR. LAFAYETTE:** Objection, relevance, and I move to  
25 strike.

1                   **THE COURT:** Overruled.

2                   **BY MR. SIEGEL:**

3                   **Q.** Were you asked to help in straightening the situation out?

4                   **A.** Yes.

5                   **Q.** And who asked you to straighten it out?

6                   **A.** Ms. Santana.

7                   **Q.** Would you look at Exhibit 2 in the blue binder just to  
8 your left.

9                   **THE COURT:** There is a defense objection raised to  
10 this document, so you're aware.

11                   **BY MR. SIEGEL:**

12                   **Q.** Can you describe what Exhibit 2 is?

13                   **A.** It's an email communication between Deanna Santana, Andrea  
14 Gourdine, Sabrina Landreth and myself.

15                   **Q.** And what's the subject of this exchange?

16                   **A.** The subject is the inaccurate information that Ms. Santana  
17 was provided by Kip Walsh who reported to Andrea Gourdine.

18                   **MR. SIEGEL:** Your Honor, I'd offer Exhibit 2.

19                   **MR. LAFAYETTE:** Objection. It's not relevant.

20                   **THE COURT:** Objection sustained.

21                   **BY MR. SIEGEL:**

22                   **Q.** Let's jump ahead then to early 2012. Were you still  
23 working for the City of Oakland?

24                   **A.** Yes, I was.

25                   **Q.** And at that time did you receive a change in your job



1 assignment?

2 **A.** Yes, I did.

3 **Q.** And what was that change?

4 **A.** I was promoted from the Employee Relations Manager to the  
5 Employer Relations Director. I no longer reported directly to  
6 the personnel director, and I reported directly to Ms. Santana,  
7 the City Administrator.

8 **Q.** So you became director yourselves?

9 **A.** Yes.

10 **Q.** You were the Employee Relations Director?

11 **A.** Yes.

12 **Q.** Andrea Gourdine was the personnel director?

13 **MR. LAFAYETTE:** Objection, leading.

14 **THE COURT:** Overruled.

15 **THE WITNESS:** Yes.

16 **BY MR. SIEGEL:**

17 **Q.** So did that mean that you and Ms. Gourdine were at the  
18 same level?

19 **A.** Yes.

20 **Q.** Both of you reported to Ms. Santana?

21 **A.** Yes.

22 **Q.** When you became the Employee Relations Director, was that  
23 a permanent position?

24 **A.** Yes.

25 **Q.** Were you appointed to that position on a short-term basis

1 so that you could negotiate some contracts?

2 A. No, I was not.

3 Q. Did you ever become the HR Director?

4 A. There were short periods of time during the absence and  
5 transition of personnel directors that I acted for short  
6 periods of time as the personnel director.

7 Q. Okay. Was that after you became the Employee Relations  
8 Director?

9 A. It was -- I believe I probably did it once prior to  
10 becoming the Employee Relations Director, and after I also  
11 became the Employee Relations Director.

12 Q. When you say short periods of time, what do you mean?

13 A. For example, if one of -- we had several different  
14 personnel directors, but if one of them went on vacation for a  
15 period of time, I would be appointed as acting to cover for  
16 them, and during blocks of time when one personnel director  
17 left and another personnel director was coming on, I would act  
18 in that capacity until a new personnel director started.

19 Q. Do you recall when it was that Andrea Gourdine left her  
20 position as personnel director with the City of Oakland?

21 A. It was toward the end of 2012, I believe. I don't  
22 remember the exact date.

23 Q. And when she left, did you become the HR Director or the  
24 personnel director?

25 A. I believe I acted for a short period of time.

1 Q. And did you continue to serve as the Employee Relations  
2 Director?

3 A. Yes.

4 Q. When you were promoted to Employee Relations Director, did  
5 you receive a salary increase?

6 A. Yes.

7 Q. I'd like you to look at Exhibit 5, please.

8 A. (witness examines document) Okay.

9 Q. Can you tell us what Exhibit 5 is?

10 A. It's an email communication between Alexandra Orologas,  
11 myself --

12 Q. Regarding what?

13 A. Regarding the issuance of a memo, although the memo is not  
14 attached. It's an email saying this is -- (reading) this is to  
15 go as the first paragraph of our inner office memo to set the  
16 tone before you talk about how we begin impact bargaining.  
17 Please review and revise. I'm sure you'll have great ideas on  
18 how to better state what she wants to say. Thanks.

19 Apparently it's a draft memo that Alex would have sent me.

20 Q. Okay. And was that memo to go out with your name on it?

21 MR. LAFAYETTE: Objection, lacking in foundation,  
22 constitutes hearsay.

23 MR. SIEGEL: It is not offered for the truth of  
24 anything. It's not hearsay, and the foundation will be  
25 established by the witness's answer to my question.

1           **THE COURT:** Overruled. You may answer.

2           **THE WITNESS:** I believe the memo went out under the  
3 City Administrator's signature.

4 **BY MR. SIEGEL:**

5 **Q.** Okay.

6 **A.** I'm not a hundred percent sure about that. It was a  
7 little while ago, but I think so.

8 **Q.** Do you know the purpose of this memo?

9 **A.** It was to clarify the level of authority of -- it says,  
10 "Events have led me to remind the organization of our  
11 obligation to adhere to the City's Memorandum of Understanding,  
12 MOUs, and delegated authorities. More importantly, we should  
13 not be misleading labor groups on what our authorities are with  
14 respect to their concerns."

15           It outlines the authority protocols outlined by the City  
16 Administrator's office.

17 **Q.** Okay. And do you know what protocols governed labor  
18 relations activity in the city in February --

19           **MR. LAFAYETTE:** I'm sorry, Your Honor. The document  
20 that is being discussed is Exhibit 5?

21           **MR. SIEGEL:** Yes.

22           **THE COURT:** Yes.

23           **MR. LAFAYETTE:** My document says that that's the same  
24 as -- I'm sorry. My error, Your Honor.

25           **THE COURT:** It's the same as document 5K.

1           **MR. LAFAYETTE:** Yes, I have it.

2           **THE COURT:** Proceed with your questioning.

3 **BY MR. SIEGEL:**

4 **Q.** Okay. What were the rules, if you want to put it that  
5 way, governing employee relations in terms of bargaining with  
6 unions in the City of Oakland in February of 2012?

7 **A.** The City Council had adopted a few ordinances dictating  
8 the realm of authority of staff dealing with organized labor.  
9 One was a city resolution, I believe it's 12903, and there was  
10 another city resolution, I believe it was 55881, and  
11 additionally, the City of Oakland has what they call an  
12 employee relations ordinance.

13 **Q.** Okay. And in summary, what do those documents provide?

14           **MR. LAFAYETTE:** Objection, Your Honor, best evidence  
15 are the documents.

16           **THE COURT:** Sustained.

17 **BY MR. SIEGEL:**

18 **Q.** What did you understand the process was in 2012 when you  
19 became Employee Relations Director for developing authority to  
20 negotiate with the unions?

21 **A.** I was very clear that staff did not have the authority to  
22 offer proposals to organized labor, that the City Council had  
23 complete authority as to what was moved across the bargaining  
24 table. Therefore, before any staff person could meet with  
25 organized labor to amend any Collective Bargaining Agreement or

1 change wages, hours, or terms of working conditions, you had to  
2 seek Council authority prior to meeting with any organized  
3 labor group.

4 Q. Okay. And was there also a protocol as to who would be  
5 the negotiator at the table on behalf of the city during  
6 negotiations with unions?

7 A. Yes. The Employee Relations Unit was responsible for  
8 bargaining, and the Employer Relations Unit reported and took  
9 direction from the City Administrator.

10 Q. And the Employee Relations Unit was the unit that you led?

11 A. Yes.

12 Q. Now, in 2012, do you recall an issue arising concerning  
13 the Rainbow Teen Center?

14 A. Yes.

15 Q. And were you asked to work on a project regarding that  
16 issue?

17 A. Yes.

18 Q. And specifically what were you asked to do?

19 A. I was asked to work with Assistant City Administrator Fred  
20 Blackwell to do an investigation and present a report to the  
21 Council on issues that had come up related to the Rainbow Teen  
22 Center.

23 Q. And you specifically, Ms. Preston, was there some aspect  
24 of that report which you were asked to look into?

25 A. Yes.

1 Q. And what aspect was that?

2 A. There were allegations that employees had not been hired  
3 appropriately and had not followed the civil service process in  
4 order to be placed in their positions, and I was asked to  
5 verify if that was true.

6 Q. Was the report that you worked on completed?

7 A. Yes.

8 Q. And would you look at Exhibit 8, please? Is Exhibit 8 the  
9 complete report?

10 A. Yes.

11 Q. And does it have your signature on it?

12 A. Yes.

13 Q. And who else, if anyone, signed that?

14 A. Fred Blackwell signed the back page, and Deanna Santana  
15 signed the front page as approved.

16 Q. Okay. And what was the date of the final version of that  
17 report?

18 A. February 24th, 2012.

19 Q. Now, do you recall whether, in the process of completing  
20 that report, there were various draft versions?

21 A. There were many, many draft versions.

22 Q. And do you recall in particular whether there was a  
23 dispute regarding the draft of the report?

24 A. Yes.

25 Q. And what was the dispute that you recall?

1 A. There was a dispute about whether or not to include  
2 language in the report that would refer Councilwoman Desley  
3 Brooks to the District Attorney's Office for prosecution of  
4 violating Charter Section 218.

5 Q. And will you look at Exhibit 6, please?

6 A. Okay.

7 Q. Is Exhibit 6 the draft report?

8 A. Yes.

9 Q. And with respect to the language about reporting  
10 Ms. Brooks to the District Attorney, did you have any  
11 conversations with anyone about whether that language should be  
12 in the report?

13 MR. LAFAYETTE: Objection, assumes facts not in  
14 evidence, lacks foundation.

15 THE COURT: Overruled.

16 THE WITNESS: Yes.

17 BY MR. SIEGEL:

18 Q. And who did you have conversations with regarding  
19 including in the report language that would refer Ms. Brooks to  
20 the District Attorney?

21 A. Ms. Deanna Santana and Barbara Parker.

22 Q. And can you tell us what you recall about those  
23 conversations?

24 A. I recall stating that I didn't think it would be  
25 appropriate for a report that was submitted by staff, and



1 particularly at my level, to contain language that would refer  
2 an elected official to the District Attorney's Office for  
3 prosecution.

4 **Q.** And did either Ms. Santana or Ms. Parker respond to that  
5 concern?

6 **A.** Yes, the language was taken out eventually.

7 **Q.** Okay. Did you have other concerns about whether that  
8 language should be in the report?

9 **A.** I did.

10 **Q.** And what were those concerns?

11 **MR. LAFAYETTE:** Objection, Your Honor.

12 **THE COURT:** What is your objection?

13 **MR. LAFAYETTE:** That's all right, Your Honor. I  
14 withdraw my objection.

15 **THE COURT:** The question was then what were those  
16 concerns?

17 **THE WITNESS:** Many members of the Oakland City  
18 Council violated Charter Section 218 of the charter as it  
19 related to interfering with staff. And in my tenure there, I  
20 had never seen or heard before that the administration would  
21 want staff to include in a report that City Council members  
22 should be referred to the District Attorney's Office for  
23 prosecution, and Ms. Brooks at that time was the only  
24 African-American woman on the Council.

25

1 **BY MR. SIEGEL:**

2 **Q.** So what.

3 **A.** I believe that she was being singled out and discriminated  
4 against.

5 **Q.** Okay. So did you have conversations regarding this  
6 proposed language in the report on one occasion or more than  
7 one occasion?

8 **A.** I believe it was more than one occasion.

9 **Q.** And who did you have those conversations with?

10 **A.** Ms. Deanna Santana.

11 **Q.** And what was Ms. Santana's position about whether that  
12 language should be included in the report?

13 **MR. LAFAYETTE:** Objection, previously asked and  
14 answered, Your Honor.

15 **THE COURT:** Overruled.

16 **THE WITNESS:** She believed that Ms. Brooks was in  
17 violation of Charter Section 218.

18 **MR. LAFAYETTE:** Objection as framed. It's talking  
19 about the state of mind of someone.

20 **THE COURT:** Let's clarify the question. What did  
21 Ms. Santana say?

22 **THE WITNESS:** She stated that she believed that  
23 Ms. Brooks was in violation of Charter Section 218.  
24 Eventually, she did agree with me that the language did not  
25 have to go into the report.

1 **BY MR. SIEGEL:**

2 **Q.** Now, was the report, the final report, Exhibit 8,  
3 presented to the City Council?

4 **A.** Yes.

5 **Q.** And was that at a council meeting on March the 6th, 2012?

6 **A.** Yes.

7 **Q.** And what happened at that meeting?

8 **MR. LAFAYETTE:** Objection, overbroad, and in a video  
9 it will be shown.

10 **THE COURT:** Sustained.

11 **BY MR. SIEGEL:**

12 **Q.** Did you speak at the meeting?

13 **A.** Yes.

14 **Q.** Did Fred Blackwell speak at the meeting?

15 **A.** On the Rainbow Teen Center issue?

16 **Q.** Yes.

17 **A.** No, he did not.

18 **Q.** Did you speak in response to a request from Ms. Santana  
19 that you speak?

20 **A.** Yes.

21 **Q.** And did you agree with the comments that were made by  
22 Ms. Santana?

23 **MR. LAFAYETTE:** Objection, Your Honor. The video is  
24 going to be shown.

25 **THE COURT:** Sustained.

1 **BY MR. SIEGEL:**

2 **Q.** After the meeting on March the 6th, I take it at some  
3 point that night you went home; is that right?

4 **A.** Yes.

5 **Q.** And what did you do when you went home?

6 **A.** I sent Ms. Santana an email.

7 **Q.** And why did you do that?

8 **A.** Because I could tell she was annoyed and upset with me,  
9 and I wanted to explain to her why I made the statement that I  
10 made.

11 **Q.** How could you tell that she was annoyed or upset with you?

12 **A.** It's obvious when Ms. Santana is annoyed or upset with  
13 you. She displays it in her mannerisms, her tone, the way she  
14 speaks to you.

15 **Q.** Would you look at Exhibit 10 in the exhibit binder?

16 **A.** Okay.

17 **Q.** Can you tell us what that is?

18 **A.** It's an email communication between Ms. Santana and  
19 myself.

20 **Q.** And when did that email communication take place?

21 **A.** I sent it to her the night of March 6.

22 **Q.** At what time?

23 **A.** 10:50 p.m.

24 **MR. SIEGEL:** Your Honor, I'd offer Exhibit 10.

25 **THE COURT:** 10 is already in evidence.

1           **MR. LAFAYETTE:** 10 is already in.

2           **MR. SIEGEL:** All right. It's not marked. Okay. Put  
3 it up there.

4 **Q.** So let's start at the bottom. So this was the first email  
5 that you wrote to Ms. Santana; is that correct?

6 **A.** On this issue that night?

7 **Q.** Yes.

8 **A.** Yes.

9 **Q.** And you wrote at 10:50: "I think you came out of the  
10 meeting looking good. You took the high road and held your  
11 position. I'm sorry I had to contradict you tonight. I hated  
12 doing it, but I had to tell the truth. I hope you understand."

13 Do you see that?

14 **A.** Yes.

15 **Q.** Did you think you had contradicted her?

16 **A.** Yes.

17 **Q.** And why do you think you had contradicted her?

18           **MR. LAFAYETTE:** Objection. Video will speak for  
19 itself.

20           **MR. SIEGEL:** The video will not speak --

21           **THE COURT:** Overruled. It will be easier to  
22 understand if that video had been shown, but you can ask the  
23 question.

24 **BY MR. SIEGEL:**

25 **Q.** Okay.

1 A. I'm sorry. Could you repeat the question?

2 Q. Sure. Why did you think when you wrote this video (sic),  
3 that you had contradicted her?

4 A. There was a point during the debate or discussion in  
5 council whether or not Councilmember Brooks had been provided  
6 with staffing information regarding there would be one director  
7 to run --

8 MR. LAFAYETTE: Objection, Your Honor. We're going  
9 into the content of the video.

10 THE COURT: Why aren't you showing the video?

11 MR. SIEGEL: Because until we discussed the  
12 scheduling problems this morning, I thought that Ms. Preston  
13 would be testifying tomorrow, so we didn't bring the video.

14 MR. LAFAYETTE: We have it, Your Honor. It's  
15 available to show it right now.

16 THE COURT: Let's move on to a different topic,  
17 because right now it's impossible to understand without  
18 referencing to what occurred in the meeting, and that video  
19 shows the meeting.

20 BY MR. SIEGEL:

21 Q. Okay. Did Ms. Santana reply to your email at 10:50?

22 A. Yes.

23 Q. And she wrote, quote. "You did not contradict me. I was  
24 answering specifically to her comment re staff staying. I did  
25 agree with you when you commented on the director. I thought

1 you heard me."

2 Do you see that?

3 A. Yes.

4 Q. Was Ms. Santana being accurate when she wrote that email  
5 to you?

6 A. No.

7 Q. Did you write back to Ms. Santana?

8 A. Yes.

9 Q. You wrote at about 11:15: "The comment about having the  
10 director of the Rainbow Rec Center manage both sites. We had  
11 that discussion with Audree, not Brooks."

12 Did you write that?

13 A. Yes.

14 Q. And who is Audree?

15 A. Audree Taylor Jones was the director of the Recreation and  
16 Parks Department for the City of Oakland.

17 Q. Okay. And did Ms. Santana write back?

18 A. Yes.

19 Q. And what did she write?

20 A. "Right, I agreed with you. I agreed with" -- it's "W" and  
21 a "U."

22 Q. And was that statement accurate?

23 A. No.

24 Q. Now, was there a change in your relationship with  
25 Ms. Santana following that meeting on March the 6th, 2012?

1 A. Yes.

2 Q. And how did your relationship change after that meeting?

3 A. Ms. Santana became very cold, standoffish. I stopped  
4 being invited to certain meetings. The directors that reported  
5 to her met with her on a weekly basis in the morning one day a  
6 week. She called it her core team meeting, and I was a part of  
7 their core team. And after this, there were several meetings  
8 that I was not invited to anymore, and our whole relationship  
9 changed.

10 Q. Now, let me ask you. Also during the early part of 2012,  
11 do you know whether there were performance evaluations taking  
12 place by members of the City Administrator's Office?

13 MR. LAFAYETTE: Objection, hearsay, lacking in  
14 foundation.

15 MR. SIEGEL: Again, I was trying to lay the  
16 foundation with the question.

17 THE COURT: Overruled. You may answer.

18 THE WITNESS: Yes.

19 BY MR. SIEGEL:

20 Q. And how did you know that?

21 A. There was an email communication that went out to  
22 directors that told us which City Administrator, there's  
23 Deanna, and then there was Scott Johnson and Fred Blackwell.

24 MR. LAFAYETTE: Objection, hearsay, and move to  
25 strike, also best evidence.



1           **THE COURT:** Is this an email you'll be seeking to  
2 admit?

3           **MR. SIEGEL:** Your Honor, Mr. Blackwell testified  
4 yesterday that it was Ms. Santana's role to evaluate  
5 Ms. Preston.

6           **MR. LAFAYETTE:** Same objection, Your Honor.

7           **THE COURT:** All right. The objection is sustained.

8 **BY MR. SIEGEL:**

9 **Q.** Would you look at Exhibit 12, please. Do you recognize  
10 that document?

11 **A.** Yes.

12 **Q.** And what is it?

13 **A.** My performance evaluation.

14 **Q.** And when did you first see it?

15 **A.** Back in 2012.

16 **Q.** Do you recall what month it was?

17 **A.** I don't remember the exact month. I don't remember the  
18 exact day.

19 **Q.** Okay. Do you recall how it was that it came to your  
20 attention?

21 **A.** I believe Alex Orologas sent an email to us saying this  
22 is -- these are the performance evaluations, this is when  
23 they're due back to Ms. Santana.

24 **Q.** So did you receive this evaluation by email?

25 **A.** Objection, move to strike as hearsay again.

1           **THE COURT:** Overruled. You can answer to establish a  
2 foundation if you can.

3           **THE WITNESS:** Yes, I believe it was by email.

4 **BY MR. SIEGEL:**

5 **Q.** Okay. And who was it that sent you that email?

6 **A.** Deanna Santana's chief of staff.

7 **Q.** And did you look at it when you received it?

8 **A.** Yes.

9 **Q.** And is this Exhibit 12?

10 **A.** Yes.

11           **MR. SIEGEL:** Okay. Your Honor, I'd offer Exhibit 12.

12           **MR. LAFAYETTE:** Objection, Your Honor. This document  
13 is not signed. There's been no testimony from anyone who said  
14 they prepared it, and therefore it's inadmissible hearsay.

15           **MR. SIEGEL:** It is the evaluation that was forwarded  
16 to her by Ms. Santana's chief of staff.

17           **MR. LAFAYETTE:** Objection, that's hearsay.

18           **THE COURT:** The objection is sustained, both as to  
19 authenticity and hearsay, and under Rule 403. And the jury, as  
20 it's disregarded other statements by counsel, will disregard  
21 the statements of counsel interpreting documents that have not  
22 been admitted in evidence.

23 **BY MR. SIEGEL:**

24 **Q.** Now, jumping ahead for about a year, do you recall an  
25 issue having to do with department heads bargaining with unions

1 without Council approval?

2 **A.** Yes.

3 **Q.** And what was the issue?

4 **A.** There was one issue that came up regarding brownouts with  
5 Local 55 and the Fire Department, and an issue regarding a  
6 paramedic premium.

7 **Q.** Okay. And I want to direct your attention to what we've  
8 heard about the issue dealing with the paramedic premium.

9 **A.** Okay.

10 **Q.** Did something about the negotiation for the paramedic  
11 premium come to your attention?

12 **A.** Yes.

13 **Q.** And how did it come to your attention?

14 **A.** I believe Donna Hom was the first person who told me that  
15 I had a staff person who was in the process of signing a TA to  
16 extend the paramedic premium.

17 **Q.** Okay. And is that Exhibit 17?

18 **MR. LAFAYETTE:** Objection, leading.

19 **THE COURT:** Overruled.

20 **THE WITNESS:** Yes.

21 **BY MR. SIEGEL:**

22 **Q.** And when was it that you learned that your staff person  
23 had signed that agreement?

24 **A.** I believe it was on July 2nd when Donna Hom came to my  
25 office and told me about it.

1 Q. As of that time, had the City Council approved the  
2 agreement to extend the paramedic program to July 30, 2013?

3 A. No.

4 Q. So when you learned that this agreement had been signed,  
5 what was it that you did?

6 A. I believe I sent Winnie Anderson a text message and  
7 instructed her to please come to my office as soon as possible.

8 Q. And did she?

9 A. Yes, she did.

10 Q. Would you look at Exhibit 20? Do you recognize that  
11 document?

12 A. Yes.

13 Q. And what is it?

14 A. It's an email communication between myself -- well, it's a  
15 couple different emails, one email communication between  
16 myself, Barbara Parker, Doryanna, and Jamie Smith, and an email  
17 that I sent to Councilwoman Desley Brooks.

18 Q. Okay. And did you send out this email when you learned  
19 that the agreement had been signed without Council  
20 authorization?

21 A. Yes.

22 Q. And at that time did you make a request from the City  
23 Attorney?

24 A. Yes.

25 Q. What was your request?

1           **MR. LAFAYETTE:** Objection, best evidence rule.

2           **THE COURT:** Are you reading from the email?

3           **MR. SIEGEL:** I am not yet, but the email is in  
4 evidence. It's Exhibit 20.

5           **THE COURT:** You may read it, and just -- the  
6 objection is sustained. And if you can restate whether you're  
7 asking her to testify about the email or a separate  
8 conversation.

9 **BY MR. SIEGEL:**

10 **Q.** In Exhibit 20, page 288, it says the following: "I need a  
11 legal opinion regarding the following. The MOU has explicit  
12 language that this provision expires on a specific date. Does  
13 the fire chief have the authority to extend a provision in the  
14 MOU without council authorization? Two, can the fire chief  
15 reduce the number of employees a premium is applicable to in  
16 order to increase the premium pay without council  
17 authorization? Please feel free to contact me if you have any  
18 questions."

19           Have I read that correctly?

20 **A.** Yes.

21 **Q.** Why were you asking the City Attorney to provide a legal  
22 opinion?

23 **A.** Because this was the second time this had occurred with  
24 the fire chief, and I thought maybe -- and I had explained to  
25 the fire chief after the first time what the process was, so I

1 thought maybe if the City Attorney would issue a legal opinion  
2 to department heads clarifying the authority of department  
3 heads and the City resolutions that govern the City's ability  
4 to engage in labor relations with labor organizations, then  
5 this incident would not occur again, because I felt it was a  
6 significant incident.

7 **Q.** Why did you think it was significant?

8 **A.** Because whenever you enter -- you sign a tentative  
9 agreement with a union, and then you have to contact that union  
10 to say that the tentative agreement that we signed I didn't  
11 have the authority to enforce, that is a significant problem.  
12 Under certain standards it would be considered, I believe,  
13 pursuant to the Meyers Milias Brown Act --

14 **MR. LAFAYETTE:** Objection, Your Honor. What's about  
15 to be spoken will constitute a legal opinion.

16 **MR. SIEGEL:** I can ask another question.

17 **THE COURT:** Ask another question. The objection is  
18 sustained.

19 **BY MR. SIEGEL:**

20 **Q.** Did you have a concern when you wrote Exhibit 20 as to  
21 whether the City's action in signing the tentative agreement  
22 might violate any particular law?

23 **A.** Yes.

24 **Q.** And what law were you concerned that the City's actions  
25 might violate?

1 A. Meyers Milias Brown Act.

2 Q. And what is the Meyers Milias Brown Act?

3 A. It's a state law in the state of California governing the  
4 employer/employee relations with public sector employees.

5 Q. And was that a law that you were familiar with back in  
6 2013 -- excuse me, 2013, yes.

7 A. Yes.

8 Q. Was that a law that you applied on a regular basis when  
9 you were heading up the Employee Relations Department?

10 MR. LAFAYETTE: Objection, leading.

11 THE COURT: Overruled.

12 THE WITNESS: Yes.

13 BY MR. SIEGEL:

14 Q. Okay. And how would the action of the city in signing an  
15 agreement with a union, where the City negotiators did not have  
16 authority to sign that agreement, implicate the Meyers Milias  
17 Brown Act in your opinion back when this occurred?

18 A. I believe it's an unfair labor practice charge which is  
19 governed by the state body called the Public Employees Relation  
20 Board.

21 Q. And explain a little bit more so we know what you are  
22 saying when you say you think that it was an unfair labor  
23 practice?

24 A. In -- I'll call it, labor world, there are rules of  
25 engagement in the collective bargaining process and meet and

1 confers, and one of the rules in Meyers Miliias Brown is that  
2 the employer is supposed to -- both parties are supposed to  
3 send people to the table that have the authority to reach an  
4 agreement, and if you send someone to the table who the union  
5 engages with in good faith bargaining and that person did not  
6 have the authority to reach an agreement, it could be  
7 considered as an unfair labor practice charge.

8 **Q.** Okay. And did you know all that when you wrote  
9 Exhibit 20?

10 **A.** Yes.

11 **Q.** And before you wrote Exhibit 20 to the City Attorney, did  
12 you discuss Chief Reed's actions with Ms. Santana?

13 **A.** Yes.

14 **Q.** And tell us about that?

15 **A.** I called her and informed her that I learned that this had  
16 happened for a second time, and I was concerned about it. It  
17 was a very significant problem. The City and Local 55's  
18 relationship was not that strong to begin with, and that this  
19 would do further damage to the City's relationship with this  
20 particular union.

21 **Q.** And what was her response to you?

22 **A.** She did not believe it was necessary for the City Attorney  
23 to issue a legal opinion. She stated that Teresa was already  
24 aware that she did not have authority to sign a grievance with  
25 organized labor without Council approval.



1 Q. When you spoke with her on the telephone, what was her  
2 tone towards you?

3 A. She was very curt, short, and hostile.

4 Q. Would you look at Exhibit 18, please? Can you tell us  
5 what Exhibit 18 is?

6 A. It's an email communication between myself, Deanna,  
7 Barbara Parker, Randy Hall, Doryanna Moreno was also included  
8 on these emails.

9 Q. And what are they about?

10 A. They're about my request for the legal opinion from the  
11 City Attorney's Office.

12 MR. SIEGEL: Your Honor, I'd like to offer  
13 Exhibit 18.

14 MR. LAFAYETTE: Is 18, Your Honor, the same as 2E?

15 THE COURT: Correct.

16 MR. LAFAYETTE: No objection.

17 THE COURT: Exhibit 18 is admitted.

18 (Trial Exhibit 18 received in evidence)

19 THE COURT: You may proceed.

20 BY MR. SIEGEL:

21 Q. Now, Ms. Santana's email to you says -- well, actually, to  
22 Doryanna Moreno with a copy to you is: "What is the legal  
23 question to answer? Teresa had no authority to sign an  
24 extension."

25 Do you see that?

1   **A.**    Yes.

2   **Q.**    Did the City have to retract the agreement it made with  
3   local --

4               **MR. LAFAYETTE:**  I'm sorry, Your Honor.  Are we  
5   looking at Exhibit 18, which is the same at 2E?

6               **THE COURT:**  Yes, that's what's indicated on the  
7   exhibit list.

8               **MR. LAFAYETTE:**  Well, my 2E is a different document,  
9   and so the key that I have is different.

10              **THE COURT:**  You are correct.

11              **MR. LAFAYETTE:**  I think there's a -- I found that  
12   it's 2H, but I just wanted to make sure I was on the same page.  
13   So when I agreed, I was looking to the admissibility of the  
14   document 2E, but I would still agree to not have an objection  
15   to 2H, Your Honor.

16              **THE COURT:**  Thank you for the clarification.  And I  
17   will clarify the ruling.  Exhibit 18 is admitted, and we will  
18   correct the chart provided by plaintiff's counsel that 18 is  
19   2H, rather than 2E.  2E has not been admitted yet.

20   **BY MR. SIEGEL:**

21   **Q.**    And after you received Ms. Santana's email where she said  
22   "what is the legal question to answer," you wrote back:  "The  
23   legal question is, what do we say to Local 55?  Is it a ULP?"  
24   Is that right?

25   **A.**    Yes.

1 Q. And is that for the reasons you were just describing to  
2 us?

3 A. Yes.

4 Q. Okay. Did the City have to retract the agreement it made  
5 with Local 55?

6 MR. LAFAYETTE: Objection as framed. It's lacking in  
7 foundation, requiring an opinion.

8 THE COURT: Sustained.

9 BY MR. SIEGEL:

10 Q. Did you provide any advice to staff as to what they were  
11 required to do concerning the agreement that had been signed  
12 between the City and Local 55 on June 30?

13 A. Yes, the TA that was signed on June 28th?

14 Q. Yes. Sorry.

15 A. Yes.

16 Q. And what was your direction to staff?

17 A. That we needed to go to City Council and receive  
18 authorization from Council prior to implementation.

19 Q. And prior to going to the City Council, did you direct  
20 that any information be provided to Local 55?

21 A. I did.

22 Q. And what was that?

23 A. We needed to tell Local 55 what was going on so that they  
24 would not be blindsided when Council agendas come out or made  
25 public.

1 Q. Okay. And did you decide who it was who was going to  
2 contact Local 55?

3 A. I believe there was an email to the Fire Department,  
4 because this was an issue that they had been in discussions  
5 with with Local 55.

6 MR. LAFAYETTE: Objection, unresponsive, Your Honor.

7 MR. SIEGEL: I can rephrase.

8 THE COURT: Rephrase. Sustained.

9 BY MR. SIEGEL:

10 Q. Did you make the decision as to who was going to tell  
11 Local 55 that the agreement that the City had signed was not  
12 valid?

13 A. Yes, I sent an email to the fire chief.

14 Q. And did you direct the fire chief to make that disclosure  
15 to Local 55?

16 A. I wouldn't call it a directive. I definitely suggested  
17 that she should talk to Local 55.

18 Q. And did you learn that she did?

19 MR. LAFAYETTE: Objection, hearsay.

20 THE COURT: It's within the scope of hearsay,  
21 previously asked and answered. I'll permit the answer.  
22 Overruled.

23 THE WITNESS: Yes.

24 BY MR. SIEGEL:

25 Q. And did the City administration then go to the City

1 Council to obtain retroactive approval of the agreement that  
2 had been made on June 28th?

3 A. Yes.

4 Q. And did you -- were you present at the closed session of  
5 the City Council when that approval was given?

6 A. No, I was not.

7 Q. Do you know why not?

8 MR. LAFAYETTE: Objection, it requires speculation  
9 and hearsay.

10 MR. SIEGEL: I'll rephrase.

11 Q. Did anyone direct you not to attend that meeting?

12 A. Yes.

13 Q. Who directed you not to attend that meeting?

14 A. Ms. Santana.

15 Q. Was it unusual in your experience, while you were the  
16 Director of Employee Relations, for you not to attend closed  
17 session City Council meetings at which labor relations issues  
18 were discussed?

19 A. I believe it was the first time in my tenure that I was  
20 instructed not to attend a closed session on labor issues.

21 Q. Does the City of Oakland have a responsibility in your  
22 view to collect union dues from employees and turn the dues  
23 over to the unions?

24 A. Yes.

25 Q. And where does that duty come from?

1 **A.** It begins in the Meyers Miliias Brown Act, and it's also  
2 part of the Collective Bargaining Agreements.

3 **Q.** Okay. So there is a provision in the Meyer Miliias Brown  
4 Act on the question of deducting -- collecting and deducting  
5 union dues?

6 **MR. LAFAYETTE:** Objection as phrased, calls for a  
7 legal conclusion, interpretation of law, and the best evidence  
8 rule of the document itself.

9 **MR. SIEGEL:** Your Honor, this case is about her  
10 complaining about a violation of law.

11 **MR. LAFAYETTE:** Your Honor, I object to the argument  
12 being asked in front of the jury.

13 **THE COURT:** Hold on. So ladies and gentlemen of the  
14 jury, the witness is being asked a question about a legal  
15 provision, and you'll recall at the beginning I asked you and  
16 told you that I'll be instructing you on the law at the end of  
17 the case. What the witness will be allowed to answer, and what  
18 you'll be hearing, is her view at the time as to a provision of  
19 law that she was applying in her position for Oakland, so she's  
20 giving you her opinion about the law.

21 At the end of the case I'll instruct you on what the law  
22 is, and it's my instruction on what the law is that you'll  
23 follow, and I am going to allow her, because it's her point of  
24 view, and something you can consider, and that's the purpose, a  
25 limited purpose that she's allowed to talk about what the law

1 is.

2 **MR. SIEGEL:** Thank you, Your Honor.

3 **Q.** So back to you.

4 What was your understanding in August of 2013 regarding  
5 the legal basis for the requirement that the City deduct union  
6 dues from the paychecks of employees and turn that money over  
7 to the unions?

8 **A.** I believe that the City had the legal responsibility to  
9 deduct union dues and submit them to the union for their  
10 membership.

11 **Q.** Okay. And what was that based on?

12 **A.** Meyers Miliias Brown Act and the Collective Bargaining  
13 Agreements.

14 **Q.** When you say Collective Bargaining Agreements, is that the  
15 same thing that people have referred to as MOUs?

16 **A.** Yes.

17 **Q.** MOU is Memorandum of Understanding?

18 **A.** Yes.

19 **Q.** And those are the contracts between the City and the  
20 unions that represent city employees?

21 **A.** Yes.

22 **Q.** Okay. So how did you become aware that there was a  
23 problem in August 2013 regarding the deduction of unions dues?

24 **A.** I was in my office, and two of my staff people came into  
25 my office to report to me what had occurred at and

1 informational meeting with Service Employees International  
2 Union.

3 Q. And who were those employees?

4 A. Winnie Anderson and Sonia Lara.

5 Q. And what did they have to tell you?

6 A. They informed me that the treasury payroll manager made a  
7 statement during the course of the meeting, when the union was  
8 asking her about union dues, that she had not deducted unions  
9 dues for temporary part-time employees not -- she had not  
10 deducted unions dues for many of the temporary part-time  
11 employees and Service Employees International Union, because  
12 they would complain to her if she had done so.

13 Q. Okay. Would you look at Exhibit 39 -- excuse me, 31 in  
14 the binder in front of you.

15 Do you see that?

16 A. Yes.

17 Q. Starting from the bottom and going up, please tell us what  
18 is in Exhibit 31.

19 A. The bottom of the page is an email from Joe Keffer to  
20 myself, Deanna Santana, Jean Quan, and members of his  
21 bargaining team, a grievance for temporary part-time employees  
22 lack of collecting union dues.

23 Q. And what is the date of the grievance included in  
24 Exhibit 31?

25 A. The date on this page is September 2nd, 2013.



1 Q. That's not the date on the copy in front of me.

2 A. Well, the date of the email is September 5th.

3 Q. Right.

4 A. And then on the top of the second page it says  
5 September 2nd, but the date of the email is dated  
6 September 5th, 2013 at 1:52 p.m.

7 Q. Okay. Now, did you receive that document?

8 A. Yes.

9 Q. And when you received that document, what was your  
10 understanding of what you were supposed to do?

11 A. My understanding was that I needed to begin an  
12 investigation to determine if the allegations the union lodged  
13 were accurate or true.

14 Q. And why did you think you had to begin an investigation?

15 A. Because in earlier in the year when the union had filed a  
16 similar grievance, they had not followed the steps of the  
17 grievance process by trying to resolve it at the lowest  
18 possible level with the payroll department. But since the  
19 payroll manager allegedly had made these statements directly to  
20 them, I think the City had an obligation at that point to  
21 determine whether or not the allegations were true.

22 Q. Okay. When you say earlier in the year, was that the  
23 grievance that was discussed as having been filed on June 26?

24 A. Yes.

25 Q. And was there some deficiency in that June 26 version of

1 the grievance?

2 **A.** It was, as I previously stated, the grievance process  
3 states that grievances should be -- you should try to resolve  
4 grievances at the lowest possible level, and since this issue  
5 was a payroll issue, the first place to start at would be to  
6 have a conversation with payroll, which Ms. Anderson had  
7 instructed them to do so earlier in the summer.

8 **MR. LAFAYETTE:** Objection, move to strike the last  
9 piece as hearsay.

10 **MR. SIEGEL:** We have the exhibit, Your Honor.

11 **THE COURT:** One moment. One moment. Overruled.

12 **MR. LAFAYETTE:** Starting with the word "Ms. Anderson,  
13 instructing them," that's the piece I'm objecting to, Your  
14 Honor.

15 **THE COURT:** Overruled. Next question.

16 **BY MR. SIEGEL:**

17 **Q.** Again, referring to the earlier version of this grievance,  
18 after Ms. Anderson had her communication -- well, first of all,  
19 did Ms. Anderson's communication with the union regarding the  
20 June 26 version of the grievance, did that reflect your  
21 instruction to her?

22 **A.** Yes.

23 **Q.** After that instruction was given to the union, to your  
24 knowledge did the union continue to pursue the grievance that  
25 they filed on June 26?

1           **MR. LAFAYETTE:** Objection, lacking in foundation, may  
2 constitute hearsay as phrased.

3           **THE COURT:** Sustained.

4 **BY MR. SIEGEL:**

5 **Q.** Was it your responsibility as Director of Employee  
6 Relations to keep track of grievances that had been filed by  
7 the unions against city departments?

8 **A.** Yes.

9 **Q.** In that regard, did you learn whether Local 1021 had taken  
10 further action on the June 26 grievance?

11           **MR. LAFAYETTE:** Objection, still constitutes hearsay  
12 as to what the union did.

13           **THE COURT:** Were you aware of it?

14           **THE WITNESS:** Yes.

15           **THE COURT:** You may proceed.

16 **BY MR. SIEGEL:**

17 **Q.** And what were you aware of?

18 **A.** The grievance process in the Collective Bargaining  
19 Agreement has specific time lines that if you are not satisfied  
20 with a grievance response at one level, you either have, I  
21 think it's either 10 or 15 days to move it to the next level.  
22 If the union does not move the grievance to the next level,  
23 then the grievance basically dies.

24           **MR. LAFAYETTE:** Objection, that's unresponsive to the  
25 question.

1           **THE COURT:** Overruled. Let's tailor it to things  
2 that she knows and particular things.

3 **BY MR. SIEGEL:**

4 **Q.** Did the June 26 grievance die because it wasn't moved to  
5 the next level?

6 **A.** Yes.

7 **Q.** So now we have a new grievance on September 2 or  
8 September 5; correct?

9 **A.** Yes.

10 **Q.** And when you received that grievance, what did you  
11 understand that your responsibilities were as Director of  
12 Employee Relations?

13           **MR. LAFAYETTE:** That question was recently asked and  
14 answered.

15           **THE COURT:** Overruled. You may answer it.

16           **THE WITNESS:** I believed it was my responsibility to  
17 conduct or have staff conduct an investigation to determine if  
18 the allegations were true.

19 **BY MR. SIEGEL:**

20 **Q.** And why did you think it was yours or your staff's  
21 responsibility to do the investigation?

22 **A.** Because Employee Relations did all of the investigations  
23 regarding grievances that we received.

24 **Q.** Okay. Now, what is the next message up the page on  
25 Exhibit 31, up the page from the union grievance message?

1 A. It's an email from me to Katano and Deanna Santana and  
2 Sonia Lara are copied on it.

3 Q. And what was the reason for sending that email?

4 A. To schedule an interview with Katano Kasaine, the payroll  
5 manager, treasury manager.

6 Q. And why did you want to have an interview with her?

7 A. Because both of my staff people had informed me that she  
8 admitted in an open meeting that she had not been deducting  
9 union dues.

10 Q. And then what was the date of your message to Katano  
11 Kasaine requesting an interview with her?

12 A. Sunday, September 8th.

13 Q. And did you contact her again?

14 A. Yes, I did.

15 Q. Why did you contact her again?

16 A. She never responded to my initial email.

17 Q. So when did you respond to her again?

18 A. On Tuesday, September the 10th.

19 Q. And is that message also included in Exhibit 31?

20 A. Yes.

21 MR. SIEGEL: Your Honor, I'd offer Exhibit 31.

22 MR. LAFAYETTE: No objection.

23 THE COURT: I think that is already in evidence.

24 MR. LAFAYETTE: Same as 3J, I think.

25 THE COURT: Same as 3J, but in an abundance of

1 caution, Exhibit 31 is admitted.

2 (Trial Exhibit 31 received in evidence)

3 **BY MR. SIEGEL:**

4 **Q.** Now, did Ms. Kasaine respond to your request for a  
5 meeting?

6 **A.** She called me on the phone, I believe, a couple of days  
7 after the second email.

8 **Q.** And what did she have to say?

9 **A.** She stated she was unclear why I was trying to reach her  
10 to interview her, that people were not telling the truth about  
11 what she said, and that she was not going to have anything to  
12 do with this.

13 **Q.** And were you ever able to interview Ms. Katano Kasaine?

14 **A.** No.

15 **Q.** Would you then turn to Exhibit 33.

16 **A.** Okay.

17 **Q.** After you sent the second email requesting an interview  
18 with Katano Kasaine, did you have a communication with  
19 Ms. Santana regarding the investigation of the SEIU grievance?

20 **A.** Yes.

21 **Q.** And when do you recall that that conversation occurred?

22 **A.** It occurred on September the 12th.

23 **Q.** And would you look at Exhibit 33?

24 **A.** Yes.

25 **Q.** What is Exhibit 33?

1 A. It's an email from me to Deanna following up on the  
2 conversation we had.

3 Q. And what occurred in the conversation that you had?

4 A. She called to inform me that I would not be and my unit  
5 would not be conducting the investigation on this grievance,  
6 that she had assigned it to Barbara Parker in the City  
7 Attorney's Office, and the City Attorney's Office would be  
8 conducting the investigation.

9 Q. And did she explain to you why she was doing that?

10 A. No, not really. She just said she decided that was the  
11 best way to handle it.

12 Q. And Exhibit 33, what was the purpose of your sending  
13 Exhibit 33?

14 A. From the conversation I had with her, it sounded like she  
15 did not believe that I could conduct a fair and impartial  
16 investigation, and I just wanted to go on record to be clear  
17 that as a professional, my personal feelings do not have  
18 anything to do with investigations. Investigations are based  
19 on facts, and that I was more than capable of conducting a fair  
20 and impartial investigation.

21 MR. SIEGEL: Your Honor, I'd offer Exhibit 33.

22 MR. LAFAYETTE: No objection.

23 THE COURT: 33, which is also 3M, is admitted.

24 (Trial Exhibit 33 received in evidence)  
25

1 **BY MR. SIEGEL:**

2 **Q.** In Exhibit 33, you describe for Ms. Santana some of the  
3 previous investigations that you had conducted as Director of  
4 Employee Relations; is that right?

5 **A.** Correct.

6 **Q.** And why did you do that?

7 **A.** One of the statements she made was because Audree was the  
8 director and I was a director, maybe it was not appropriate for  
9 me to investigate another director, so I wanted to point out to  
10 her that in the past I had been assigned to investigate other  
11 directors, department heads within the City of Oakland.

12 **Q.** And you mentioned that you had done an investigation of  
13 Katano; is that right?

14 **A.** That is correct.

15 **Q.** And who is Katano?

16 **A.** Katano Kasaine is the payroll, treasury manager.

17 **Q.** And you also say: "I investigated Audree."

18 **A.** Yes, Audree Taylor Jones, who was the Recreation & Parks  
19 Director for the City of Oakland.

20 **Q.** And did you receive any response from Ms. Santana to  
21 Exhibit 33?

22 **A.** I don't remember receiving a response from her.

23 **Q.** Would you look at Exhibit 34, please?

24 **A.** Yes.

25 **Q.** Does Exhibit 34 refresh your recollection as to whether



1 you did receive a response from Ms. Santana?

2 A. Yes.

3 Q. And did you?

4 A. Yes.

5 Q. And what did Ms. Santana advise you?

6 A. The email states: "I did not state that I was going to  
7 have Barbara conduct the investigation. I stated that I had  
8 consulted with Barbara, and that what I was going to add a  
9 third party -- I was going to add a third party. Please  
10 reflect my comments correctly. I have added Barbara to this  
11 email string because she and I had just discussed my desire to  
12 add a third party and not have her take over the  
13 investigation."

14 Q. Okay. And did you respond to Ms. Santana?

15 A. I responded on Tuesday, September 17th.

16 Q. And what did you respond to her?

17 A. I wanted to let her know that I was being contacted by the  
18 union requesting a response, and their pursuant to our  
19 Collective Bargaining Agreements, the City only has so much  
20 time to respond to grievances at different levels.

21 MR. LAFAYETTE: Is this 3T, is this in evidence?

22 MR. SIEGEL: It is in evidence.

23 BY MR. SIEGEL:

24 Q. And you wrote to Ms. Santana, you said: "Deanna, SEIU has  
25 requested the status of the grievance. I will be sending out

1 investigatory interview notices this week. Will you please  
2 provide the name of the third party, so that I can contact that  
3 person for dates?"

4 Is that what you wrote to Ms. Santana?

5 **A.** Yes.

6 **Q.** And when you wrote that, were you attempting to facilitate  
7 the work of the third party in investigating the grievance?

8 **MR. LAFAYETTE:** I would object, Your Honor. It's  
9 leading, but --

10 **THE COURT:** Sustained.

11 **BY MR. SIEGEL:**

12 **Q.** Okay. Why did you indicate to Ms. Santana that you wanted  
13 to send the information to the third party?

14 **A.** To help the third party begin the investigation so the  
15 union would not believe that the City was ignoring its  
16 grievance.

17 **Q.** Okay. Now, what was your personal reaction when  
18 Ms. Santana told you that you were being taken off this  
19 grievance investigation?

20 **A.** I was very shocked, honestly. I had -- that had never  
21 occurred to me before, and I was dismayed, and I felt  
22 slightly -- I felt like she was attempting to paint a picture  
23 that I was not capable of conducting a fair and impartial  
24 investigation. I felt like she was trying to make reference to  
25 my professionalism and the work that I had been engaged in for

1 over 20 years.

2 **Q.** And despite your feeling about that, did you undertake in  
3 a professional way to assist whoever was going to investigate  
4 the grievance?

5 **A.** Absolutely.

6 **Q.** I'd like you to look at Exhibit 37, and particularly the  
7 message from you in the middle of the first page of Exhibit 37.  
8 Can you tell us what that message is?

9 **A.** It's an email from me to Barbara Parker and Doryanna  
10 Moreno, and Deanna Santana is copied on it, and the email is  
11 saying: "Attached is the grievance from SEIU regarding the  
12 City not deducting union dues for temporary part-time  
13 employees. Deanna informed me last night that she has decided  
14 to work with the City Attorney's Office to coordinate and  
15 complete the investigation of the grievance. This is the only  
16 document I have. As instructed, I had not started the  
17 investigation."

18 **Q.** And then how did you conclude that?

19 **A.** "Thanks."

20 **MR. SIEGEL:** Your Honor, I'd like to offer  
21 Exhibit 37.

22 **MR. LAFAYETTE:** No objection, Your Honor.

23 **THE COURT:** 37, also known as 3W, is admitted.

24 (Trial Exhibit 37 received in evidence)  
25

1 **BY MR. SIEGEL:**

2 **Q.** So that's the message that you wrote on September 19th at  
3 about 1:00 in the afternoon; is that correct?

4 **A.** Yes.

5 **Q.** And who is Doryanna Moreno?

6 **A.** She is one of the deputy city attorneys in the City  
7 Attorney's Office for the City of Oakland.

8 **Q.** So again, despite the way you felt about the situation,  
9 were you doing your best to conduct yourself in a professional  
10 manner regarding --

11 **MR. LAFAYETTE:** Objection, leading.

12 **THE COURT:** Sustained.

13 **BY MR. SIEGEL:**

14 **Q.** In fact, was there ever a time that you responded to  
15 Ms. Santana in a rude manner about the fact that she had taken  
16 away this grievance responsibility from you?

17 **A.** No.

18 **Q.** Now, following your efforts to transfer grievance  
19 responsibility to the City Attorney's Office, did something  
20 come to your attention regarding the conduct of a city manager  
21 with respect to the grievance investigation?

22 **A.** The conduct of the City Manager?

23 **Q.** No, a city manager?

24 **A.** "A," yes.

25 **Q.** And what was it that you learned?

1   **A.**   The president of the Service Employees Union chapter in  
2   the City of Oakland, Dwight McElroy, contacted me to say  
3   that --

4               **MR. LAFAYETTE:**  Objection, Your Honor.  She's about  
5   to give hearsay testimony.

6               **THE COURT:**  Sustained.

7               **MR. SIEGEL:**  The communication from Mr. McElroy is  
8   offered, Your Honor, not for the truth of the matter asserted,  
9   but as an explanation for the actions taken by Ms. Preston when  
10  she received the --

11              **THE COURT:**  Rephrase it to accomplish that objective.

12              **MR. SIEGEL:**  Okay.

13  **Q.**   Did you receive a communication from a union official  
14  regarding Katano Kasaine's actions with respect to the  
15  grievance?

16  **A.**   Yes.

17  **Q.**   And what was it that you -- what was the information that  
18  you received?

19              **MR. LAFAYETTE:**  Still object.  It's hearsay.

20              **MR. SIEGEL:**  Again, it's offered to explain why she  
21  acted as she did.

22              **THE COURT:**  Overruled.

23              **THE WITNESS:**  I was contacted by Dwight McElroy, and  
24  he informed me that Katano Kasaine had contacted him and was  
25  applying pressure to him to withdraw the grievance, and stated

1 that if he would withdraw it, that she would make sure that the  
2 union got every dime that they were due, and that they would be  
3 made whole if he would withdraw his grievance.

4 **MR. SIEGEL:** Okay. I'd like to put up Exhibit 41,  
5 which is already in evidence.

6 **THE COURT:** It is.

7 **MR. SIEGEL:** Yes.

8 **THE COURT:** Yes. Go ahead.

9 **BY MR. SIEGEL:**

10 **Q.** So is this Exhibit 41, if we can just look at the date for  
11 a second, please. This is an email, isn't it, that you wrote  
12 on Sunday, September 29th, at 4:40 in the afternoon to Barbara  
13 Parker and Deanna Santana?

14 **MR. LAFAYETTE:** Just object to the frame of the  
15 question as leading.

16 **MR. SIEGEL:** Your Honor, this is --

17 **THE COURT:** Overruled.

18 **MR. SIEGEL:** -- in evidence.

19 **THE COURT:** Overruled. Go ahead.

20 **BY MR. SIEGEL:**

21 **Q.** Did you write this email?

22 **A.** Yes, I did.

23 **Q.** And why did you write this email to Barbara Parker and  
24 Deanna Santana?

25 **A.** Because I felt it was my responsibility to inform them

1 that I had been contacted by Dwight regarding this issue, and I  
2 also feared that if I didn't tell them and it came out later,  
3 that I would be blamed for it.

4 Q. Okay. Well, let me ask you this. At this point you were  
5 no longer handling the grievance; is that right?

6 A. No, I was not.

7 Q. But nonetheless, you took responsibility to send that  
8 email to Ms. Parker and Ms. Santana; correct?

9 A. Yes, I did.

10 Q. So the date of that email is Sunday; right?

11 A. Correct.

12 Q. And two days later, on October 1st, 2013, was there a City  
13 Council meeting?

14 A. Yes, there was.

15 Q. And is Tuesday the normal date for City Council meetings  
16 in Oakland?

17 A. Yes, it is.

18 Q. And was there a closed session meeting?

19 A. Yes, it was.

20 Q. And did you attend that meeting?

21 A. Yes, I did.

22 Q. Prior to that meeting, had Ms. Santana given you any  
23 instructions about what you could or should not say?

24 A. Yes, she did.

25 Q. And what was the instruction that she gave to you?

1 A. She instructed me not to raise the issue regarding the  
2 SEIU grievance while I was doing my presentation on the status  
3 of bargaining the SEIU part-time MOU.

4 Q. And the grievance, did you understand that the grievance  
5 that she was referring to is the grievance that was -- you  
6 discussed a few minutes ago that Joe Keffer had sent to you?

7 A. Yes.

8 Q. Okay. And was the status of the negotiations a separate  
9 matter from the grievance?

10 A. No, I believe they were combined. Could I explain?

11 Q. Sure. Please explain.

12 A. Because the union kept raising the issue at the bargaining  
13 table, and --

14 Q. What issue?

15 A. They kept raising the issue of the SEIU part-time union  
16 dues not being collected at the bargaining table, and so  
17 although the grievance process is separate from the collective  
18 bargaining process, the union was raising the issue about part  
19 timers' dues not being collected on a regular and consistent  
20 basis. Additionally, on the bottom of their proposals for the  
21 part-time MOU, they had a proposal in which they wrote on the  
22 bottom of the proposal that they will not be dropping, even if  
23 the City agreed to their language, because they had a proposal  
24 to amend the union dues section --

25 MR. LAFAYETTE: Objection, Your Honor. This is all



1 hearsay and best evidence now.

2           **THE COURT:** All right. Sustained at this point.

3 Let's ask a new question.

4 **BY MR. SIEGEL:**

5 **Q.** Okay. Was the document with the language containing the  
6 SEIU proposals on the table at the closed session of the City  
7 Council meeting on October 1?

8 **A.** Yes.

9 **Q.** And did any member of the City Council ask you a question  
10 about the SEIU grievance?

11 **A.** Yes.

12 **Q.** And who was it who asked you that question?

13 **A.** Councilmember Desley Brooks.

14 **Q.** And did you respond to her question?

15 **A.** Yes.

16 **Q.** And why did you do that?

17 **A.** Because I had an obligation to tell the truth.

18 **Q.** And you did so even though --

19           **MR. LAFAYETTE:** Objection, it's leading.

20           **THE COURT:** Sustained.

21 **BY MR. SIEGEL:**

22 **Q.** Okay. Now, let me ask you, on the day following that City  
23 Council meeting, was there a negotiation between the Local SEIU  
24 1021 team and the team for the City led by you?

25 **A.** I believe so.

1 Q. Would you look at Exhibit 43, please?

2 A. Yes.

3 Q. Can you tell us what Exhibit 43 is?

4 A. It's a tentative agreement between the City of Oakland and  
5 SEIU regarding the obligation -- "union notifies the city that  
6 a unit member has not executed a payroll deduction  
7 authorization form. The City shall immediately begin automatic  
8 payroll deductions."

9 MR. LAFAYETTE: Objection.

10 THE COURT: One moment. We're going to stop there  
11 for the day. I've got a legal matter to talk about with the  
12 parties, and we're near the 4:00 o'clock hour.

13 So thank you for your continued attention of the jury.  
14 We're going to resume our trial. We're on case to finish it  
15 ahead -- or on schedule, and we'll resume tomorrow at 9:00 a.m.  
16 with Ms. Preston back on the stand.

17 Thank you for your time.

18 (Proceedings were heard out of presence of the jury:)

19 THE COURT: Ms. Preston, you may step down. We're  
20 going to be in recess for five minutes, and then talk about  
21 some evidentiary issues.

22 (Recess taken from 3:56 p.m. until 4:02 p.m.)

23 (Proceedings were heard outside the presence of the jury:)

24 THE CLERK: Remain seated, and come to order. Court  
25 is now in session.

1           **THE COURT:** All right. We're back on the record.  
2 The jury is not present. Some evidentiary issues to discuss.

3           **MR. SIEGEL:** Yes.

4           **THE COURT:** Exhibit U. Exhibit U: An important  
5 video referenced now 15 times during the trial. Why do we not  
6 have it to show to the jury?

7           **MR. SIEGEL:** Well, excuse me, Your Honor. As I said,  
8 we had Ms. Preston teed up to testify tomorrow with a video.  
9 So, you see, because --

10          **THE COURT:** Where is it?

11          **MR. SIEGEL:** It's in my office with the laptop that  
12 includes it, which we just as soon schlep over here once,  
13 instead of multiple times. And since we planned to use it  
14 tomorrow, we planned to bring it tomorrow. That's all. No  
15 mystery.

16          **THE COURT:** All right. Well, it's a mystery to me  
17 why you wouldn't be prepared for it, but all right. Your  
18 prognostication was that the testimony would be an hour.  
19 You've gone an hour and a half now, and the efficiency of it is  
20 diminished by not having a video to play along with it. I'm  
21 confident that you'll bring it tomorrow, and we can show it.

22          There are three e-mails -- 3O, 3U, and 4H -- which are  
23 e-mails from Ms. Preston to Mr. Siegel. And I understand  
24 there's an objection about privilege from those e-mails. And I  
25 want to resolve that now, outside the presence of the jury, so

1 we don't have a dispute about it in the presence of the jury.  
2 So let me ask the Defense if they are intending to use those  
3 exhibits with Ms. Preston tomorrow.

4 **MR. LAFAYETTE:** Yes, Your Honor.

5 **THE COURT:** All right. And then let me hear from  
6 plaintiff's side as to what the privilege that attaches to  
7 those e-mails, if you are, in fact, continuing to assert an  
8 objection to those e-mails.

9 **MR. SIEGEL:** Well, Your Honor --

10 **THE COURT:** Yeah. Go ahead.

11 **MR. SIEGEL:** Your Honor, the Court issued an Order on  
12 February 11th, 2015, regarding whether there was some  
13 misconduct on the part of Ms. Preston with respect to sending  
14 those e-mails to her attorneys. I believe the Court concluded  
15 in that Order that there was nothing blameworthy with respect  
16 to Ms. Preston's actions. If there was nothing blameworthy,  
17 then those actions are simply ordinary communications between a  
18 client and her attorney. So --

19 **THE COURT:** All communications between a client and  
20 attorney are not privileged. A topic does not become cloaked  
21 in privilege just by sending it to an attorney. So what is it  
22 about those particular communications that evidences a  
23 communication with a legal purpose?

24 **MR. SIEGEL:** Ms. Preston sent me those e-mails in the  
25 context of our ongoing relationship -- attorney-client

1 relationship -- to later me as to some incidents that --

2 Now I'm actually explaining the communication.

3 -- it was to ask my legal advice as to what she should do,  
4 in light of what was disclosed in the e-mails. I think I can  
5 say that much without --

6 **THE COURT:** And what's the evidence of that  
7 foundation; that purpose?

8 **MR. SIEGEL:** What is the evidence?

9 **THE COURT:** Yeah. You know, I'm not trying to hide  
10 the ball. There are a few. Some of them have text and  
11 e-mails.

12 **MR. SIEGEL:** Right.

13 **THE COURT:** That evidence is something. So you can  
14 start with that. That's not giving away something  
15 confidential.

16 **MR. SIEGEL:** Yeah, as well as background  
17 conversations that we had by telephone and in person.

18 **THE COURT:** And are you going to lay a foundation as  
19 to when your representation began, and whether -- and when it  
20 was contemplated that there would be litigation?

21 **MR. SIEGEL:** I would, but I'm not going to be able to  
22 pull that date out of the air. I can certainly do that, but --

23 **THE COURT:** Your proffer is: This was after that?

24 **MR. SIEGEL:** It was after that. And it was when  
25 Ms. Preston had concerns about her employment security. I

1 guess I could say that much without, again, violating the  
2 privilege.

3 **THE COURT:** All right. Go back to Defense.

4 What is the probative value? What's the relevance? And  
5 that's one of the objections of the e-mails from Ms. Preston to  
6 her counsel.

7 **MR. LAFAYETTE:** It goes to our case that this has  
8 been an attempt by plaintiff to orchestrate a dispute; to file  
9 a lawsuit against my client. And it starts with the -- and I  
10 can draw the lines through it, all the way commencing from the  
11 e-mail that she sent on the -- I think it's the 3rd or 4th of  
12 July, where she's asking for a legal opinion, and omitting  
13 Deanna Santana. There are all these different lines that I  
14 start drawing through this, where she is not exercising her  
15 rights or whatever she has under the City of Oakland policies  
16 and procedures. Instead, it -- from where we stand, this is  
17 all part of an orchestrated scheme. And that's part of our  
18 defense in this case.

19 There is nothing about these documents that are --

20 **THE COURT:** Keep facing me and the reporter. There's  
21 no jury to talk to now.

22 **MR. LAFAYETTE:** I'm sorry. I was going to pick my  
23 binder up, because I could see more.

24 **THE COURT:** And why aren't the communications  
25 privileged?

1           **MR. LAFAYETTE:** The only time that they're --

2           Because there has been no attorney-client relationship  
3           created yet. I haven't heard a proffer that says that there  
4           was something. In fact, I heard the proffer that it was  
5           something after that.

6           So these are nothing more than improper communications,  
7           again, where she's sending documents from the City to someone  
8           else. And that's exactly one of the things that we're saying  
9           she's been doing, is sending documents to third parties who  
10          shouldn't be receiving them.

11          **THE COURT:** All right. Mr. Siegel, anything further?

12          **MR. SIEGEL:** Your Honor, I can tell you that -- that  
13          Ms. Preston and I had established an attorney-client  
14          relationship prior to her sending me these materials in  
15          connection with the questions that she had regarding her  
16          employment relationship.

17          And I -- frankly, I -- I don't know what to say to  
18          Mr. Lafayette's statements about trying to conjure up a  
19          dispute. Ms. Preston did not want to be fired by the City of  
20          Oakland. She was interested not in creating a lawsuit at her  
21          termination. She was interested in forestalling a termination,  
22          and the need to file litigation.

23          **MR. LAFAYETTE:** I would state it this way,  
24          Your Honor. There is an exhibit, which I think is probably B.  
25          Exhibit B. It's an early exhibit for plaintiff, as well.

1       There's no expectation of any type of privacy with regard  
2 to the e-mails from City-owned computers. This is what this  
3 appears to be, because if you look at this document, this is a  
4 document produced --

5       For example, 3U -- that's a document produced by the City  
6 of Oakland in this litigation. And that policy that we  
7 produced specifically states there's no expectation of any form  
8 of privacy with regard to this. If she wanted to keep this a  
9 private communication between her and a lawyer, she should have  
10 used her personal e-mail.

11       Specifically looking at Exhibit 3U, there is nothing in  
12 that document that in any way whatsoever relates to a  
13 communication that would be a protected communication. All  
14 she's doing is sending here a salary ordinance to him, but it's  
15 not something where it's seeking legal advice from him. That's  
16 not what this is. 3U is clearly not a privileged document.  
17 And I'm sorry.

18       **THE COURT:** Okay. 30, which she is now sending to  
19 him, is the e-mail where her boss has directed that she is not  
20 going to do this investigation.

21       There is no appropriate reason as to why she would be  
22 sending someone out to -- out of the City an e-mail from her  
23 boss, direct an e-mail that she sends to her boss, objecting to  
24 an investigation being handled by someone else. There is no  
25 opinion requested here.



1           **THE COURT:** All right. Here's my ruling on 30, 3U,  
2 and 4H. Those are the e-mails I'm aware of identified in the  
3 joint Exhibit List that are e-mails from Ms. Preston to  
4 Mr. Siegel. If there are other documents of the same type, I'm  
5 not aware of them; but I would address them if the parties  
6 brought them to my attention.

7           The first objection is whether the -- those documents are  
8 relevant; and if they are relevant under Rule 403, if that  
9 probative value is outweighed by the danger of confusion,  
10 distraction, and unfair prejudice.

11           And the second objection is privilege; whether they are  
12 communications seeking legal advice from counsel.

13           Starting with the second issue, there is also a response  
14 that even if intended to solicit legal advice, they were sent  
15 from a City computer. And it's asserted there's not a  
16 reasonable expectation of privacy in any communication.  
17 Therefore, there could not be a privilege that attaches to it.

18           There's also a presently a foundational hole in whether an  
19 attorney-client relationship had been established; and if so,  
20 on what date.

21           I'm not going to reach the issue of whether an  
22 attorney-client privilege has been reached and at what date at  
23 this time.

24           I'm not going to reach the issue of whether there's a  
25 reasonable expectation of privacy in an e-mail from a City

1 computer to Council.

2 My ruling is that, if probative, the probative value is  
3 substantially outweighed by the danger of confusion to the  
4 jury, and unfair prejudice to Ms. Preston.

5 There is other ways. And Mr. Lafayette's referenced other  
6 e-mails which are in the record, and other information in the  
7 record about Ms. Preston's motives that can be more directly  
8 used to challenge her credibility and her motives. But I think  
9 that there is a great danger of confusion to the jury, and the  
10 possibility that it will be sliding right on into other  
11 attorney-client-privileged communications, once I let in -- if  
12 I were to let in three e-mails between a client and her  
13 counsel. And that could consume many hours, itself, as well as  
14 being confusing to the jury about which communications are in,  
15 and which are out.

16 So on that basis, Rule 403, that I'm going to exclude each  
17 of those e-mails, and any communications that might have gone  
18 along with those e-mails.

19 **MR. LAFAYETTE:** Could I just speak to one of the  
20 e-mails, Your Honor?

21 **THE COURT:** You may.

22 **MR. LAFAYETTE:** Exhibit 3U. That's one where there  
23 is no solicitation there. And it's clearly sending something;  
24 not, now, something that she's created. It's sending documents  
25 from the City that shouldn't be sent out. And I don't have

1 anything that is as clean and clear as that.

2       You see, the problem it would create is I'm talking about  
3 sending e-mails to Desley Brooks. Then you're asking me to  
4 break up against her communicating with a government official.

5       The same thing with Mr. Swanson.

6       This is the clearest example that I actually have. And so  
7 in the interest of protecting her, you're actually putting my  
8 hands behind my back as to what I can say was an inappropriate  
9 communication outside of the City.

10       **THE COURT:** Well, let me respond to that, because  
11 there's another reason why that e-mail, in particular, is not  
12 admissible. It was not a basis for Ms. Preston being fired.  
13 The 9/17/13 e-mail to Mr. Siegel was not a basis of her being  
14 fired.

15       **MR. LAFAYETTE:** We haven't had testimony on that yet.

16       **THE COURT:** Do you have a proffer that she was fired  
17 because of the 9/17/13 e-mail to Mr. Siegel?

18       **MR. LAFAYETTE:** I will talk to my client, Your Honor.  
19 I think what you're -- because what I haven't done is examined  
20 my client with regard to all of the reasons why she was fired.  
21 I specifically stopped my examination at the March 6th meeting.  
22 I didn't go beyond that. And so my case is still relevant on  
23 these items.

24       **THE COURT:** Do you have a proffer as I sit here right  
25 now --

1           **MR. LAFAYETTE:** Yes.

2           **THE COURT:** -- as to whether that e-mail to  
3 Mr. Siegel was a basis, stated in October, for her being fired?

4           **MR. LAFAYETTE:** I appreciate that, Your Honor. And  
5 if I -- if I can't, I will so advise you. Okay? But I do not  
6 intend to sort of slip up on -- I'm not going to do anything  
7 like that.

8           **THE COURT:** Well, I haven't heard it. So based on  
9 not having heard it -- and we're here in the middle of trial --  
10 I'm not intending to admit it, because the danger of jury  
11 confusion is that it might lead to the inference that she was  
12 fired on October 2nd because of the e-mail she sent to  
13 Mr. Siegel, when, in fact, that's not the facts of what  
14 occurred; but it could be an argument an inference of that is a  
15 basis for her being fired, when, in point of fact, that's not  
16 the reason that she was fired. So we don't want to confuse the  
17 jury with different theories. And I know you don't want to  
18 confuse them, either.

19           You've got other facts you can argue. And I'm not  
20 preventing you from arguing those facts. I'm not tying your  
21 hands behind your back, but I want it to be a fair fight.

22           So my ruling is 3U is excluded. If there is some  
23 additional foundation that would establish its relevance and  
24 its fairness as an exhibit under Rule 403, then I'll hear that  
25 later.

1           **MR. LAFAYETTE:** Thank you, Your Honor. I appreciate  
2 it.

3           **THE COURT:** Mr. Siegel, anything further about that  
4 topic?

5           **MR. SIEGEL:** No. A different topic.

6           **THE COURT:** All right. What's your next topic?

7           **MR. SIEGEL:** Exhibit 12.

8           **THE COURT:** Yes.

9           **MR. SIEGEL:** The evaluation. I would submit,  
10 Your Honor, that it is -- I take it the concern is foundation.  
11 And I --

12           **THE COURT:** I've stated a number of different bases:  
13 Foundation, authenticity, hearsay. And I think under Rule 403  
14 that there could be additional bases.

15           Very little foundation as to where the document came from.  
16 You got testimony that there was an e-mail. It's not an  
17 e-mail. It's a document that doesn't, on its face, evidence  
18 any e-mail or e-mail attachment. So -- or how it was stored,  
19 or who edited it. There are a lot of questions about it that  
20 have not been answered.

21           **MR. SIEGEL:** Okay. I think that foundation is  
22 established when there's a communication from one party to  
23 another, and one party says, "Yes, I received this document  
24 from the other."

25           Secondly, the document was produced to my firm by

1 defense -- by defense counsel in response to a request for the  
2 documents contained in Ms. Preston's personnel file. So we  
3 could show you that's where it came from.

4 And thirdly, the document has elements of  
5 self-authentication, where there is a statement in the document  
6 that could only reasonably be -- have been made by Ms. Santana,  
7 where she recites that I -- "I" -- that is, Miss Santana --  
8 promoted you in January to be in charge of EOPD, I think.

9 **THE COURT:** I don't think that's a fair inference.  
10 There was testimony that those evaluations were written by  
11 different people using different voices. And the use of the  
12 word "I" doesn't mean that it was written by any one person.  
13 On the face of it, it's not signed. It's unclear if there were  
14 different drafts. And what you're saying about its creation is  
15 not evidence in the trial. You're telling me as a proffer, but  
16 it's not a foundation that's been laid by a witness during the  
17 trial, or by some other means of a stipulation or something  
18 else.

19 **MR. SIEGEL:** Okay.

20 **THE COURT:** So the -- my ruling on that issue stands.

21 I -- let's touch base on who's coming tomorrow, and what  
22 evidence is coming tomorrow. What's our plan?

23 **MR. LAFAYETTE:** We just discussed that, Your Honor.

24 **THE COURT:** Great.

25 **MR. LAFAYETTE:** Mr. Siegel says he has approximately

1 15 minutes left with plaintiff.

2 **THE COURT:** Great.

3 **MR. LAFAYETTE:** And because we have Ms. Parker  
4 coming, I'm going to hope the Court will indulge us by allowing  
5 Ms. Parker to come and testify before I do my cross -- start my  
6 cross-examination of plaintiff.

7 And then Mr. --

8 **THE COURT:** How long are you planning to examine  
9 Ms. Parker?

10 **MR. LAFAYETTE:** I can give you a better --  
11 Ms. Parker?

12 **THE COURT:** Yes. You want her to go next?

13 **MR. LAFAYETTE:** Yeah. I don't know. Fifteen  
14 minutes. I think I've been kind of short today with my  
15 examinations. I'm trying to do that.

16 **THE COURT:** We'll see what the jury thinks.  
17 Do you have any objection to having Ms. Parker go next?

18 **MR. SIEGEL:** No, not at all.

19 **THE COURT:** So after -- at the conclusion of  
20 Ms. Preston's direct examination, we'll have Ms. Parker go next  
21 with your direct --

22 **MR. LAFAYETTE:** Yeah.

23 **THE COURT:** -- and cross-examination. And we'll  
24 conclude Ms. Parker?

25 **MR. LAFAYETTE:** We'll conclude Ms. Parker.

1           **THE COURT:** All right.

2           **MR. LAFAYETTE:** As I think we're talking about, we'll  
3 go back to plaintiff.

4           **THE COURT:** All right.

5           **MR. LAFAYETTE:** I don't think there's going to be --  
6 but there's a possibility, I think, Mr. -- Mr. Siegel has said  
7 at 1:00 o'clock he has Ms. Ogus coming. And then he has  
8 Mr. Ewell coming. I hope to be done with plaintiff before  
9 that. Okay? But if that's the case, then I've advised him  
10 that bring them in, because they're traveling people; get them  
11 done. That's where I'm at with that.

12           **THE COURT:** Have you made a decision, or are you  
13 calling Donelan? Are you calling Robertson? Are there other  
14 witnesses?

15           **MR. SIEGEL:** We're calling Donelan; not Robertson.

16           **THE COURT:** Okay.

17           **MR. SIEGEL:** What's the other -- or Garcia?

18           **THE COURT:** McElroy?

19           **MR. SIEGEL:** We are calling Dwight McElroy, yes.

20           **THE COURT:** When is Dwight McElroy coming?

21           **MR. SIEGEL:** Well, we need to see if they're  
22 flexible -- the other witnesses. The witnesses who are not  
23 flexible are Barbara Parker, and Margo Ogus, and Lamont Ewell.

24           **THE COURT:** And what about with Katano?

25           **MR. SIEGEL:** And Mr. Lafayette is going to find out



1 if Katano Kasaine is flexible or not. If she's not flexible,  
2 then we have to get her on tomorrow, also.

3 **MR. LAFAYETTE:** We talked about this, and I've got  
4 people trying to resolve that issue. And hopefully we'll have  
5 that issue resolved before we show up here tomorrow morning at  
6 9:00 o'clock. I just want to make sure I understand.  
7 Mr. Garcia is not going to testify, at all. Right?

8 **MR. SIEGEL:** Correct.

9 **MR. LAFAYETTE:** Does not come on. And Mr. Robertson  
10 is not going to testify at all in their case. And  
11 Barry Donelan will.

12 **MR. SIEGEL:** Will.

13 **MR. LAFAYETTE:** And Dwight McElroy?

14 **MR. SIEGEL:** Will.

15 **MR. LAFAYETTE:** Will testify.

16 **THE COURT:** And, Mr. Lafayette, you've got  
17 Mr. Donelan on your list, too. Can we conclude your  
18 examination when he's called, likely?

19 **MR. LAFAYETTE:** Yes, I'm assuming, when he takes the  
20 stand. I will try. There have only been a few where it can't.  
21 And I'm trying to do that where I can.

22 **THE COURT:** All right. And you're on notice that  
23 your case is going to be here on Friday.

24 **MR. LAFAYETTE:** Yeah.

25 **THE COURT:** You need to have witnesses ready to go on

1 Friday.

2           **MR. LAFAYETTE:** I'll have witnesses available on  
3 Friday.

4           **THE COURT:** So there's some flexibility to work out,  
5 but the starting task for tomorrow is finish the direct with  
6 Ms. Preston. We'll do the direct and the complete exam of  
7 Barbara Parker; conclude Ms. Preston's examination; then fill  
8 in from there, with Ogus expected at 1:00 o'clock; potentially  
9 Ewell immediately after that; and others to be followed.

10           **MR. SIEGEL:** Correct.

11           **THE COURT:** We're all seeing eye to eye on that?

12           **MR. LAFAYETTE:** I think we are, Your Honor.

13           **THE COURT:** Great.

14           **MR. LAFAYETTE:** I think we're working pretty good.

15           **THE COURT:** Outstanding. Any other document issues  
16 with that expected cast tomorrow?

17           **MR. LAFAYETTE:** I don't think so.

18           **THE COURT:** Can you foreshadow -- are there any --

19           **MR. SIEGEL:** Big problems? No.

20           **THE COURT:** Any objections that should be raised now,  
21 outside the presence of the jury?

22           I don't see that there are many documents left in this  
23 stack that I foresee being -- I've seen a few documents, but  
24 it's your case.

25           **MR. LAFAYETTE:** No. And I think you're right. I

1 would be the first to say there's overdesignation for purposes  
2 of just making sure that they're available.

3           **THE COURT:** All right. Mr. Siegel, do you see any  
4 other evidentiary objections that I can resolve now, before  
5 tomorrow's evidence?

6           **MR. SIEGEL:** I do not, Your Honor.

7           **THE COURT:** All right. Let's talk about some of the  
8 closing instructions, and Verdict Form. You may have some  
9 additional issues beyond the ones that I want to talk about.  
10 This is not a final word on it, but I wanted to touch base with  
11 you along the way, to make sure we are going the same  
12 direction.

13 All right. Now I'm looking at the annotated jury  
14 instructions re: claims and damages that we sent out to you  
15 this weekend as the working draft of that, as well as the  
16 proposed Verdict Form. Do you have that with you somewhere?

17           **MR. LAFAYETTE:** Is that Document 140 Your Honor?

18           **THE COURT:** That sounds right.

19           **MR. SIEGEL:** Yes. 140.

20           **THE COURT:** All right. So one of the issues is  
21 starting on page 1. Ms. Preston must prove each of the  
22 elements by a preponderance of the evidence that Santana acted  
23 under color of law. And I'm talking about the 1983 claim  
24 against Ms. Santana in her individual capacity. Can we  
25 stipulate that she was acting under color of law? Is that an

1 issue that's in dispute? Is there some evidence that's going  
2 to be coming disputing whether she was acting under color of  
3 law, or can we stipulate to that fact?

4 **MR. LAFAYETTE:** We may, Your Honor, but I haven't  
5 spoken to Ms. Santana about that, and I would like the ability  
6 to do that.

7 **THE COURT:** All right. I have no problem with that.  
8 My perception is that that's not really a disputed  
9 question; and if so, we can take it off the Verdict Form if  
10 it's not in dispute. So if you can, get back to me tomorrow  
11 morning with that.

12 I assume that the -- I shouldn't assume.

13 Would Ms. Preston agree if we can stipulate to that fact?

14 **MR. SIEGEL:** Yes.

15 **THE COURT:** Next question, turning to the second  
16 page. This is within, still, the claim for violation of 1983  
17 against Ms. Santana; and that is whether Ms. Preston's speech  
18 was on a matter of public concern. This is the second of the  
19 four elements.

20 The pattern instruction -- and I put this in brackets, to  
21 get your input. The pattern instruction provides that the  
22 Court is to instruct the jury that the speech was not a matter  
23 of public concern, and therefore the second elements requires  
24 no proof.

25 And I wonder if the Defense agrees to that.

1           **MR. LAFAYETTE:** No, Your Honor. I think this was not  
2 a matter of public concern. I think this was manufactured.  
3 And so if I -- if I stipulate to that, I'm going to be deprived  
4 of saying what I think I need to say.

5           **THE COURT:** And here I'm not asking you to stipulate  
6 to it. I'm telling you that the pattern instruction, which is  
7 civil 9.9, provides that it's an issue that requires no proof.  
8 And I'm asking for you to give me authority that says that's  
9 wrong --

10           **MR. LAFAYETTE:** Oh, it --

11           **THE COURT:** -- and why I should not give that  
12 instruction. It's a separate issue from the facts.

13           **MR. LAFAYETTE:** Yes.

14           **THE COURT:** If that's the law, then we don't need to  
15 go into the facts; but if there's case law that says that  
16 instruction is improper or would be improper in this case, I  
17 need you to --

18           **MR. LAFAYETTE:** I'll provide you with some legal  
19 authority as to why that --

20           Because I read that as an option; that there are some --  
21 that that's not necessarily mandated. Otherwise, it wouldn't  
22 be in the brackets. So it's --

23           **THE COURT:** Well, to be clear, I put it in brackets  
24 to bring it to your attention.

25           **MR. LAFAYETTE:** Okay. I'll give you something on it.

1           **THE COURT:** And I also wanted to bring it up now, so  
2 that Ms. Preston and her counsel would be on fair notice that  
3 there's not been many facts -- maybe no facts -- brought in on  
4 whether her actions were on a matter of public concern, versus  
5 a private concern. And I wanted to give them an opportunity to  
6 think about the law as well as to develop the facts before we  
7 get to the close of plaintiff's case.

8           **MR. LAFAYETTE:** Okay, Your Honor.

9           **THE COURT:** The next issue right next to it is  
10 whether Ms. Preston's termination was an adverse employment  
11 action. I think it could be stipulated as a matter of fact  
12 that her being terminated was adverse.

13           **MR. LAFAYETTE:** I -- I think that I would be hard  
14 pressed to say that a termination is not an adverse employment  
15 action.

16           **THE COURT:** I'll -- again, because Ms. Santana's not  
17 here, I'll allow to you confer with her to alert her that  
18 that's my expected ruling.

19           **MR. LAFAYETTE:** Yes.

20           **THE COURT:** And if it is, then there will not be a  
21 box in the Verdict Form deciding whether termination was  
22 adverse or not.

23           **MR. LAFAYETTE:** Can you just do me a courtesy,  
24 Your Honor? Let me know which page and line.

25           **THE COURT:** It's on page 2, lines 21 and 22. And.

1 I've drafted it to instruct the jury that termination is  
2 adverse.

3 If you thought that was an improper instruction, I'll give  
4 you until tomorrow to persuade me why that's wrong, but I --

5 **MR. LAFAYETTE:** I may suggest and -- rather than say  
6 that Ms. Preston's termination was, just something more neutral  
7 that says "A termination is an adverse employment action."

8 **THE COURT:** All right. I'll consider that.

9 **MR. LAFAYETTE:** Okay.

10 **THE COURT:** All right. Turning to the next page,  
11 page 3, this -- under the *Dahlia* factors, turning to  
12 Ms. Santana's standard, if Ms. Preston can prove the first four  
13 elements, then she can defeat the retaliation claim through a  
14 preponderance of evidence by establishing two elements; and  
15 they're identified as five and six.

16 Five is that Santana had adequate justification for  
17 treating Preston differently than other members of the general  
18 public. And again, that's -- that's the law. I am searching  
19 for law that might explain that, and also highlighting for the  
20 parties the scarcity of facts that have come in as to that  
21 element. So if you have some further instruction that you  
22 would suggest on that, I welcome your ideas. And ultimately,  
23 as this is Santana's burden, I'll be looking for the Defense to  
24 identify facts that would support this element, if that's one  
25 of the ones you're arguing.

1           **MR. LAFAYETTE:** I will look at this, Your Honor. I  
2 can tell you that seems to come -- and I'll look at more  
3 particular cases involving discrimination, where someone is  
4 treated differently than other people. That's what that  
5 language seems to be. And this is not a discrimination case,  
6 so that's what concerning me about the language.

7           **THE COURT:** It seems from your opening statement that  
8 Issue 6 -- that Santana would have terminated Preston, even  
9 absent protected speech -- is what you're going for.

10           **MR. LAFAYETTE:** Yes.

11           **THE COURT:** But 5 is also part of the instruction.  
12 So if that's improper --

13           **MR. LAFAYETTE:** Yes.

14           **THE COURT:** -- or the law makes it the alternative, I  
15 need to be persuaded -- I want to make sure I'm following the  
16 law correctly in instructing the jury, as you also need to  
17 follow the law.

18           **MR. LAFAYETTE:** Yes.

19           **MR. SIEGEL:** Your Honor, I also have --

20           **THE COURT:** Yes.

21           **MR. SIEGEL:** -- concerns about Item 5. And we can  
22 look into it more. It kind of doesn't make sense, in the sense  
23 that -- in the sense that Ms. Santana didn't have the authority  
24 to treat other members of the public differently or the same.  
25 She could only take an adverse action against Ms. Preston,



1 because Ms. Preston was an employee of the City of Oakland.

2           **THE COURT:** It doesn't really fit with the facts of  
3 this case very well. So we have to think about it; if we  
4 should be jettisoning that instruction or modifying it.

5           **MR. LAFAYETTE:** Work something out.

6           **THE COURT:** All right. So put that on your homework  
7 list.

8           Turning to the 1102.5 claim against the City of Oakland,  
9 elements that Preston must prove: That Oakland was Preston's  
10 employer -- I think that's stipulated to, or I propose that we  
11 stipulate that Preston was employed by the City of Oakland.

12           And the next element is that the City of Oakland believed  
13 that Preston -- and here, I just have a question about agency.  
14 The City of Oakland is not a person. It doesn't have a belief.  
15 So we could have an additional instruction on agency, and that  
16 a city acts through its employees; or we could have it say that  
17 Santana -- if Santana is the person with the authority to  
18 terminate Preston, if we inserted Santana's name for "Oakland"  
19 here, and have it agreed that Santana believed that Preston did  
20 A. B, and C, I think that would be -- would fit the facts of  
21 the case, but I throw it open to you for your thought.

22           **MR. LAFAYETTE:** I -- I think, Your Honor, that, from  
23 what I've been hearing, it's not that she is saying that it is  
24 racially -- I think 11 -- that the Labor Code requires her to  
25 show that she was protesting something that was unlawful. If

1 it's racially discriminatory --

2           **THE COURT:** Well, that's a different issue. The  
3 first issue is whether it's Oakland, or through any of its  
4 employees --

5           **MR. LAFAYETTE:** Okay.

6           **THE COURT:** -- or if it's Santana in particular.

7           **MR. LAFAYETTE:** I will grapple with that, Your Honor.  
8 And I understand the importance of the issue.

9           **THE COURT:** And the danger of confusion is that this  
10 claim is against Oakland. The first claim is against Santana.  
11 And they're separate claims.

12           If we inserted Ms. Santana's claim here, it could be  
13 confusing as to whether they're both against Santana, but  
14 really it was Santana, acting as Oakland's agent, who  
15 terminated Preston. So I think that might be a factually  
16 correct statement.

17           On the next page, page 5, at the top, in paragraphs 4 and  
18 7 -- same issue, where the instruction says that the City of  
19 Oakland terminated Preston, and that Oakland's conduct was a  
20 substantial factor causing Preston's harm; whether we should  
21 either insert Santana's name there, being the person who did  
22 the terminating, or we should just explain to the jury that  
23 when we say "Oakland," we mean Oakland, through its employees  
24 or agents. From plaintiff's version, that would mean it could  
25 be -- plaintiff's view, that means it could be Santana who did

1 these things, or someone else on behalf of Oakland who did  
2 these things. Maybe it's a little broader.

3 I'm not sure what your preference is, Mr. Siegel, as to  
4 whether you want to specify who it is for Oakland that you  
5 allege took those actions.

6 **MR. SIEGEL:** You mean the termination actions?

7 **THE COURT:** Right.

8 **MR. SIEGEL:** Well --

9 **THE COURT:** Would you prefer to say "Oakland, through  
10 its employees and agents," or would you prefer to say that  
11 Santana terminated Preston?

12 **MR. SIEGEL:** That Oak --

13 Well, I think to be accurate, it would be Oakland, acting  
14 through City Administrator Santana.

15 **THE COURT:** You don't have a theory as -- somebody --  
16 someone different from the City Administrator is the one that  
17 terminated Preston?

18 **MR. SIEGEL:** No. I mean, we accept the interrogatory  
19 response that it was Ms. Santana's decision.

20 **THE COURT:** All right. So I'll give the Defense a  
21 chance to think about that. And if there's --

22 **MR. LAFAYETTE:** Your Honor, also line 18.

23 **THE COURT:** Yes.

24 **MR. LAFAYETTE:** I may look at the  
25 clear-and-convincing standard, because I -- for some reason, in

1 the back of my mind I think there's a State Supreme Court  
2 Opinion that addresses this issue. And I'll just take a look  
3 at it. If there is, I'll give it to you.

4 **THE COURT:** Very good.

5 Moving on to page 6 -- and we haven't gotten to the  
6 damages part of the case, as far as what the experts want to  
7 say, but I'm just identifying for you in the Verdict Form the  
8 we've broken it into past economic damages, future economic  
9 damages, pain and suffering.

10 This has got an instruction that's a little bit different  
11 than that: Earnings, earning capacity, salary.

12 We could modify that to fit exactly the Verdict Form.  
13 Because I haven't heard how the expert is going to testify to  
14 it, I haven't made any effort at changing that yet, but I  
15 welcome your drafting. I think this is primarily a  
16 plaintiff's-side issue of defining it -- the damages you're  
17 seeking, so that the jury will be able to match up the  
18 instruction to the testimony that comes in.

19 Does that make sense?

20 **MR. SIEGEL:** Yes. Yeah. And what the expert's going  
21 to testify is past economic, future economic.

22 **THE COURT:** Yeah. And we want it to not be using  
23 different terminologies, so that the jury gets confused by  
24 hearing something about earning capacity, when we're not  
25 referring to earning capacity during the testimony.

1           **MR. LAFAYETTE:** There's -- there is something --  
2           Go ahead, Your Honor.

3           **THE COURT:** No. Is there something in that section?

4           **MR. LAFAYETTE:** You were just in the -- it's in the  
5           damages section on page 7.

6           **THE COURT:** All right. I'm headed that way.

7           Nominal damages. I haven't put nominal damages into the  
8           Verdict Form. It is, on 1983 claim, a recoverable if there are  
9           facts to support it.

10          Mr. Siegel, do you want me to have an instruction for  
11          nominal damages in the Instructions and Verdict Form?

12          **MR. SIEGEL:** Yes.

13          **THE COURT:** All right. So then I think that I  
14          will -- I need to modify the Verdict Form to have a blank for  
15          that, so that it's a possible recovery.

16          All right. Punitive damages. I think there's some  
17          controversy as to whether the burden should be by a  
18          preponderance, or clear and convincing evidence. I've drafted  
19          it as "by a preponderance of the evidence." That's on the  
20          bottom of page 6/top of page 7.

21          If there are additional authorities that the Defense would  
22          like to bring to my attention as to why it should be  
23          clear-and-convincing standard, please advise me.

24          **MR. LAFAYETTE:** I -- I think that you have a  
25          state-law claim that you're proceeding on. And the state-law

1 statute, which is 3294, provides a clear-and-convincing  
2 standard.

3 **THE COURT:** Now, the only punitive damage is against  
4 Santana.

5 **MR. LAFAYETTE:** Yes. That's right, Your Honor.

6 **THE COURT:** So --

7 **MR. LAFAYETTE:** I stand corrected.

8 **THE COURT:** So there's no opportunity for punitive  
9 damages against Oakland on the 1102.5 claim.

10 **MR. LAFAYETTE:** I would still argue that  
11 state-damages statute is 3294. And that's the statute that  
12 authorizes punitive damages. And it has a clear-and-convincing  
13 standard.

14 **THE COURT:** All right. Compare that to the  
15 Ninth Circuit's Model Instruction 5.5.

16 **MR. LAFAYETTE:** I will do that.

17 **THE COURT:** And if there's a case that goes your way  
18 in this circumstance, bring it to my attention.

19 **MR. LAFAYETTE:** I will.

20 **THE COURT:** I drafted it to be "by a preponderance."

21 **MR. LAFAYETTE:** I understand.

22 **THE COURT:** And I've left blank, and will fill in  
23 once we hear from the economic expert, the categories of  
24 damages. And we'll put some facts in, as well as the law, to  
25 give examples to the jury that match what the plaintiff is

1 actually seeking in the case. All right.

2 **MR. LAFAYETTE:** I have a comment on page 7.

3 **THE COURT:** Go ahead.

4 **MR. LAFAYETTE:** Where it says, "You may award  
5 punitive damages only if you find that Santana's conduct that  
6 harmed Preston was malicious" -- in this case, we've heard a  
7 lot of things about not getting a search warrant, or looking at  
8 her e-mails -- so all of those types of things -- but that's  
9 not one of the issues in this case. And what I don't want is a  
10 risk that, because this is this language, that that becomes  
11 something that someone runs down the street with. And I think  
12 this language needs to be addressed, and focused to what we're  
13 talking about here, because it's the termination.

14 **THE COURT:** All right. I'll consider that. And if  
15 there's language you would propose to add explaining the harm,  
16 I'll consider adding it in.

17 **MR. LAFAYETTE:** Thank you.

18 **THE COURT:** There's a Ninth Circuit reversal -- not a  
19 reversal -- a Ninth Circuit affirmance last week in a 1983  
20 case, where there was some conduct that was not part of the  
21 actionable claim that the jury awarded \$3 million on. And  
22 ultimately, the verdict was thrown out. There was a retrial.  
23 And the Ninth Circuit affirmed that that was -- the proper way  
24 of going with things was to focus the punitive damages on the  
25 particularly unconstitutional harm. So I think there's some

1 support for targeting punitive damages to the unconstitutional  
2 harm, rather than just to general badness.

3 **MR. LAFAYETTE:** Yeah.

4 **THE COURT:** So if there's a way to accomplish that, I  
5 think that's reasonable targeting. All right.

6 Anything else from the Defense side?

7 **MR. LAFAYETTE:** Not that I can think of right now.

8 **THE COURT:** Okay. I'll give you a further chance to  
9 elaborate on these topics, but I wanted to start focusing our  
10 thoughts.

11 Mr. Siegel, anything further?

12 **MR. SIEGEL:** There was one thing I was thinking  
13 about -- and I'm not sure what the Court thinks, and what the  
14 Defense thinks -- whether there needs to be an instruction  
15 which lays out the state and federal law that Ms. Preston  
16 thought was being violated in connection with her 1102.5 claim.

17 **MR. LAFAYETTE:** Dan, do you have statutes that you  
18 want to suggest that we take a look at?

19 **MR. SIEGEL:** Well, I don't have it written out, but  
20 she believed that discriminatory action would violate state and  
21 federal law, and that the issues relating to the Local 55  
22 bargaining and the failure to deduct fees would violate --

23 LaWanna, do you remember the provisions of MMD 3505 and  
24 3506? Was that the ones we were talking about?

25 **MS. PRESTON:** I believe so. I think so. I'd have to



1 look at it to be sure, but I believe so.

2           **MR. LAFAYETTE:** We'll talk about these, Your Honor;  
3 see if we can come up with something.

4           **THE COURT:** What's implicated is -- on page 4,  
5 paragraph 3 -- whether Preston can prove reasonable cause to  
6 believe that one of the prior categories disclosed activities  
7 or refused or violations or noncompliance with the law. So  
8 "reasonable" is the word in there, modifying "cause."

9           And, of course, there's not the cross-examination  
10 yesterday of Ms. Preston to see if her belief was reasonable or  
11 not. And that could require a comparison to objective  
12 categories -- comparison to what the law actually is. If --  
13 and I don't know if you're going to make that defense, or not.

14           If you do make that challenge, then I think it would be  
15 pragmatic to advise the jury what the law is, rather than have  
16 them be guessing what the law is from each side.

17           The down side of that approach is I don't want to give the  
18 jury an entire code book of 3,000 laws, and have them guess at  
19 which law might have been violated, and which one wasn't  
20 violated. And I'm particularly concerned that there is an  
21 attorney and a legal secretary on the jury who might, despite  
22 instruction, go off on their own investigation to decide if  
23 there was a violation of law. So we don't want to encourage  
24 courage that collectively.

25           So we need to be precise about which laws the plaintiff is

1 asserting that she had reasonable cause to believe were  
2 violated. And if there's a difference of opinion from the  
3 Defense about whether that was reasonable or not, that we have  
4 a very pointed counter to that, and can only instruct the jury  
5 on something that's in dispute.

6 Long-winded, but does that make sense to you?

7 **MR. LAFAYETTE:** I think so, Your Honor. We'll talk.  
8 And I don't want to open up any doors that we don't need to  
9 open up here.

10 **THE COURT:** Yeah. So it may ultimately be this is  
11 not an issue in dispute; or you can leave it without further  
12 instruction on the law, but I'm open to instructing on the law  
13 as long as we can make it focused on the law that's actually  
14 implicated by the testimony.

15 Anything else, Mr. Siegel, that you think we should be  
16 thinking about?

17 **MR. SIEGEL:** No, Your Honor.

18 **THE COURT:** I've got one other, which is: Both on  
19 the 1983 claim against Santana and the 1102.5 claim against the  
20 City, there are elements for emotional-distress damages.

21 As of yet, we haven't heard much testimony about the  
22 emotional-distress damages, and who caused it; but it seems  
23 likely that there might be some overlap between those areas of  
24 damages. If Ms. Preston establishes the elements for each  
25 claim, and we get to a damages phase, how we ask the jury to

1 award damages in those two different categories.

2 And if there's going to be evidence of emotional-distress  
3 damages caused by someone at Oakland other than Ms. Santana.

4 And that's really going to be first a question for the  
5 plaintiff, as to whether your theory of the case is that, say,  
6 for example, Jean Quan caused emotional distress, or  
7 Sandre Swanson, or someone else on the Council, or --

8 You know, if there was someone else from Oakland who  
9 caused emotional distress that's separate from the distress  
10 caused by Ms. Santana, I think we need to spell out what it is  
11 that you're asserting, and potentially instruct the jury that  
12 as to -- you know, we're not going to have double recovery for  
13 emotional distress against -- that Ms. Santana caused. If  
14 Ms. Santana caused it, that's one measure of damages. That's  
15 not going to be that, plus that again.

16 If there's some emotional distress that someone else at  
17 Oakland caused that's separate from what Ms. Santana caused,  
18 well, then I can hear that evidence. I haven't heard it yet.

19 **MR. LAFAYETTE:** I think the emotional distress -- my  
20 understanding is that emotional distress derives from the  
21 termination. And that's kind of the case. It's the  
22 termination that's the issue. And so because it's the  
23 termination that is the issue, it is -- it's really the  
24 decision to terminate that I think we focused on.

25 **THE COURT:** Well the 1102.5 claim is a retaliation

1 claim for a refusal to participate in unlawful acts. I think  
2 theoretically it could go beyond the termination.

3 **MR. LAFAYETTE:** But the retaliatory act, even for  
4 that, is the termination. You see, for -- it doesn't make any  
5 difference which vehicle -- which cause of action you're  
6 looking at. The -- the adverse action is always going to wind  
7 up being the termination. That's -- that's the way I thought  
8 of it, because you have to have an adverse action. And that is  
9 the adverse action. And so I think we should be looking at the  
10 damages from the standpoint of: Those did arise from the fact  
11 that she loses her job.

12 **THE COURT:** Yeah.

13 And does plaintiff agree with that assertion; that the  
14 emotional-distress injury is the same for each cause of action?

15 **MR. SIEGEL:** Your Honor, what I agree with is your  
16 point that there should not be double recovery for emotional  
17 distress. And I've been thinking about how the Verdict Form  
18 might be revised so that there's only one opportunity for the  
19 jury to consider each type of damages.

20 **THE COURT:** That's the area of overlap. I mean,  
21 that's got an entry right now in both places --

22 **MR. SIEGEL:** Right.

23 **THE COURT:** -- to think about, to avoid this problem.  
24 And maybe you put it in one category or the other if you don't  
25 have any additional facts that are, you know --

1           **MR. SIEGEL:** Right.

2           **THE COURT:** If you agree it's all an Santana-caused  
3 damages, and you think that claim is your best shot, you put it  
4 in that column, and you avoid the confusion of: It was  
5 somebody else who did it, so not awarded.

6           **MR. SIEGEL:** Right. I mean, it's a little  
7 technically difficult in terms of devising the Verdict Form,  
8 you know, just because, in part, the structure of 1983 law is  
9 Ms. Santana's responsible for the damages that flowed from her  
10 action, but it's the City that actually terminated her  
11 employment. You know, if we were doing a discrimination case,  
12 Ms. Santana might be the manager who made the decision; but  
13 it's always the entity which is responsible for certain types  
14 of damages.

15           In the context of 1983, the law is a little bit different  
16 when you have a public actor acting in her personal capacity,  
17 but I think we should -- we should design the Verdict Form so  
18 that it says, "If you decide that Ms. Santana violated the  
19 plaintiff's constitutional rights, or you decide that the City  
20 violated her rights under 1102.5, then answer, you know,  
21 Question 7X in terms of the amount of damages that flowed  
22 from -- from those actions together or singularly." Something  
23 like that.

24           **MR. LAFAYETTE:** It's kind of -- if you do a stacked  
25 instruction, where you have first cause of action; and if, for

1 some reason, they don't hit one of the bullets, you drop down  
2 to the second. And then only after you go through the second  
3 do you get to the issue of damages. And if they hit on both of  
4 the damages -- if they hit on liability on both, then it hits  
5 down to the damages. And the only separate item that would be  
6 for Ms. Santana would be the punitive-damages piece of that.  
7 That's kind of the way.

8 **MR. SIEGEL:** Right.

9 **THE COURT:** The -- the danger of stacking it like  
10 that to the Defense is that you put punitive damages at the  
11 bottom of this. And although we'll be instructing the jury  
12 that punitive damages can only be awarded against Ms. Santana,  
13 it comes to the bottom of the stack. They've gone through it.  
14 They've filled out numbers against Oakland. And they say, "Now  
15 let's do punitive damages against Oakland, too." And they fill  
16 in all of the blanks in the Damages section.

17 I'm not predicting that. I'm not forecasting that. But  
18 the concern, if you put it all at the bottom, is that they kind  
19 of give you the rough justice at the bottom, rather than  
20 parsing it out when you're in Part 1 to say, "Okay. We're  
21 deciding against Ms. Santana. Now we're moving into the  
22 Part 2."

23 **MR. LAFAYETTE:** I'll give more thought to it. And I  
24 see the dilemma. And we've been grappling with it, to be  
25 honest with you, in this case.

1           **THE COURT:** I think part of it is, I think, a  
2 fairly -- it could be a solution to just take the emotional  
3 distress out of one part or the other, to avoid any confusion.  
4 It would be problematic potentially if there's a different  
5 number in each category for emotional distress, without any  
6 explanation for or evidence that would support 10,000 for one  
7 and 5,000 for the other, when there's no evidence of someone  
8 other than Ms. Santana causing emotional distress.

9           **MR. SIEGEL:** All right. We'll take a look at the  
10 form. Maybe we will come up with an agreement. Maybe we'll at  
11 least sharpen the disagreement, so it will be easier for you to  
12 resolve.

13           **THE COURT:** Very well. Thank you for your additional  
14 attention and consideration. We're going to retouch on some of  
15 those Verdict Form issues and Jury Instructions. Thank you.  
16 We're in recess until tomorrow morning.

17 (At 4:53 p.m. the proceedings were adjourned.)  
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1 I certify that the foregoing is a correct transcript from the  
2 record of proceedings in the above-entitled matter.

3  
4 

5 September 16, 2015

6 Signature of Court Reporter/Transcriber Date

Lydia Zinn

7  
8 

9 September 16, 2015

10 Signature of Court Reporter/Transcriber Date

Rhonda Aquilina